

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 22ND

DECEMBER 2000, AT 10.30AM:

MR. COUGHLAN: Mrs. Mulhearn.

EIMEAR MULHEARN, HAVING BEEN SWORN, WAS EXAMINED AS  
FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mrs. Mulhearn, I think you are the  
daughter of Mr. Charles Haughey, isn't that correct?

A. Yes.

Q. And I think the Tribunal raised a query with you,  
particularly, in relation to the sale of a yearling to  
Mr. Fustok?

A. Yes.

Q. And for the assistance of the Tribunal, I think you,  
through your legal advisers, furnished a memorandum of  
proposed evidence for the Tribunal, isn't that correct?

A. Yes.

Q. I think the Tribunal's queries related not just  
specifically to the dealing with that particular  
dealing with Mr. Fustok, but raised queries about  
records and matters of that nature and in your  
Memorandum of Evidence, you have dealt as  
comprehensively as you possibly can with all the  
queries raised by the Tribunal, is that correct?

A. Yes.

Q. What I intend doing is to lead you through that

statement, then, Mrs. Mulhearn, if any inquiries arise at the end I'll ask you about those if that's all right with you.

I think you have informed the Tribunal that you run a stud farming business which is now based at the Curragh, County Kildare, at what is known as Meadow Court Studs, is that correct?

A. Yes.

Q. I think the trading name of the business is Abbeville and Meadow Court Studs, is that right?

A. Yes.

Q. In 1997, your father sold his stud farm in Ashbourne, County Meath. I think we have heard about that. That was the Rath Stud, is that correct?

A. That's right.

Q. I think you have informed the Tribunal that the horses, all thoroughbreds, were transferred to your home farm at Abbeville, is that correct?

A. Yes.

Q. Prior to that, Abbeville had been used for the keeping of half-breed horses, for example, Hunters, show jumpers and horses of that nature, is that right?

A. Yes.

Q. As there was no one in Abbeville with the expertise required to take care of thoroughbred horses, you undertook to look after them until a new manager was appointed, is that correct?

A. Yes.

Q. I think this, in fact, never took place and you began a crash course in self-education in the bloodstock industry, is that correct?

A. Yes.

Q. You are self-taught in relation to the matter?

A. More or less.

Q. I think you have informed the Tribunal that in 1979, when your father became Taoiseach, you took over the running of the stud farm completely?

A. Yes.

Q. However, it always remained his property and many of the bills were paid by him, such as public liability insurance, ESB and utility bills of that nature, is that correct?

A. Yes.

Q. You did not pay any rent for the use of the extensive facilities; in a sense, therefore, it could be said that Abbeville was run as a family farm.

A. Yes.

Q. I think you have informed the Tribunal that many of the mares that arrived at Abbeville were old and not producing the standard of stock required so over the next few years, you began the task of replacing them with potentially promising mares. I think this task was well underway when in the late 1980s and early 1990s a very severe recession hit the bloodstock

industry, is that correct?

A. Yes.

Q. I think you have informed the Tribunal that the industry is very cyclical and is historically subject to volatility.

A. Yes.

Q. At that time, there was no market for your stock and the bloodstock sales were very poor. That's the late eighties and early nineties?

A. Yes, and 1990.

Q. 1990. I think you have informed the Tribunal that as you had heavy borrowings at the time, you then had to sell off most of the mares to settle your borrowings and keep the business afloat, is that correct?

A. Mmm.

Q. You did and relied even more heavily on keeping and selling horses for other people to keep the business going, is that correct? I think you also began to trade horses even more so then previously, is that correct?

A. Yes.

Q. And over the next ten years and to the current day you managed to trade your way out of the trouble and put the business back on a sound footing, is that correct?

A. Yes.

Q. Now, I think you have informed the Tribunal that you ran Abbeville Stud as your main centre of business from 1979 until 1989, is that right?

A. Yes.

Q. In 1989, following your marriage the previous year, your husband and you purchased Meadow Court Stud at the Curragh in County Kildare.

A. Yes.

Q. For a year or two, you ran the two farms, Abbeville and Meadow Court but quite soon realised that this was too difficult to manage. You then began to move all the important horses to Meadow Court and gradually moved all the horses in there, is that correct?

A. Yes.

Q. At the time of moving to live at Meadow Court, you moved your office and located it there also and took with you whatever documents and records which were relevant to you at that time.

A. Yes.

Q. Anything which you felt related to the farm at Abbeville, you left there and anything that you felt was not relevant to either was thrown out.

A. Yes.

Q. I think you have informed the Tribunal that you do not want to give the impression that this was done in a systematic way.

A. No.

Q. It was simply a practical matter?

A. Mmm.

Q. You took what was needed for the currency of your

business, is that correct?

A. Yeah.

Q. The files you believe you took related to pedigree records, veterinary records, etc., of all the animals currently in your ownership in whom you still had an interest?

A. Yes.

Q. You believe you took general files relating to information gathered over the years such as, for example, veterinary matters, pedigree analysis, grassland management, worming programmes, etc. They were working documents effectively?

A. Yes.

Q. I think files left in Abbeville related to half bred horses which were kept there, buildings and would have general information specifically related to Abbeville property, is that correct?

A. There is a misprint there, yeah.

Q. After you moved to Meadow Court, you kept some mares at Abbeville for a while, mainly barren and maiden mares and had someone look after them for you and your office was used by many people over the intervening years, is that correct?

A. Yes, the move was gradual and most of the horses moved, but you know just one or two were left and they eventually

Q. Somebody looked after them at Abbeville.

A. Yeah.

Q. I think you have informed the Tribunal that when all of the thoroughbred horses left, Abbeville became a livery riding stables and this carried on to present day under various different people, is that correct?

A. Yes.

Q. I think your old office there has been used by different people over these years and everyone has used the same filing cabinets, shelves, etc., and so gradually almost everything that you left there either deteriorated or was disposed of to make room or because it was no longer considered useful?

A. Yes.

Q. Can I just ask you there, did you engage in any review of any of the material left there or was it just left to the people who were working at Abbeville?

A. No. Subject to the Tribunal making inquiries, I went down to the office in Abbeville and went through it.

Really there was nothing left there.

Q. This was when the queries were made for the purpose of the Tribunal. But over the years, things just

A. Yeah, I mean

Q. Got thrown out?

A. Anything I needed I brought, so anything of importance came with me. I probably, at the time, you know, anything that was like not of any relevance to anybody, I imagine, thrown out. I mean, it wasn't done in any

particular way.

Q. But this wasn't done by you personally or under your supervision or anything, or would you have been asked by people, is it worth keeping this or?

A. Yeah, I imagine that, you know we didn't sort of leave one day, do you know what I mean? I was sort of leaving over a period of time. I'd be going and getting more stuff and bringing it down and then as I said, there been many people using the office so I suppose in the passage of time, books I mean, I don't know, books and things would have got thrown out, you know. There is a few magazines and stuff like that still left there from my time. I think anything of importance came. Anything that wasn't of relevance, I imagine just got thrown out, you know.

Q. I think you have informed the Tribunal that shortly after the thoroughbreds left, a farm manager was appointed to run and maintain the farm at Abbeville and to make it commercially viable, is that correct?

A. Yeah.

Q. The main business carried out was that of deer farming with some cattle activity also taking place, is that right?

A. Mm-hmm.

Q. I think much of the land was rented out to local tillage and serial farmers and these activity took place for several years until deer farming in Ireland



experienced difficulties, is that correct?

A. Yes.

Q. Now, I think you have informed the Tribunal that the business of Abbeville and Meadow Court Studs currently and of Abbeville previously is and was that of a private stud farm operation.

A. Yes.

Q. I think you have informed the Tribunal that you did not keep stallions, but used the best stallions available wherever they were located?

A. Yes.

Q. I think you have informed the Tribunal that there are different aspects to the business and you outline them as follows:

Firstly, mares which you own yourself, that is mares which are owned by you totally whom you breed from and who produce and whose produce you sell as either foals or yearlings, is that right?

A. Yes.

Q. Secondly, mares which you own in partnership and foals and yearlings you sell on behalf of your partners and yourself?

A. Yes.

Q. Thirdly, mares which are owned by other people but which reside permanently at Meadow Court and whose produce you rear or either sell on the owner's

behalf or prepare them for racing.

Fourthly, mares who visit your stud during the breeding season and return home after a few months. They are usually overseas.

A. Mm-hmm.

Q. Fifthly, mares or fillies coming from the race track which you buy for the purpose of selling on again.

A. Yes.

Q. Sixthly, fillies off the track which you buy to return into brood mares and retain on the stud for breeding, is that correct?

A. Yes.

Q. Seventhly, foals which you buy as foals for resale as yearlings.

Eighthly, foals which are borne on the stud which you sell as foals a year later as yearlings as foals or as yearlings.

A. Yes.

Q. And then ninthly, horses borne or raised with you who are going into racing and who will go to who will not go to the sales for the purpose of being sold, is that correct?

A. Yes.

Q. Now, I think in relation to the records you have informed the Tribunal that records are kept in a fairly simple way and have only become computerised recently,

is that correct?

A. Yes.

Q. This is a very hands-on business and it is a small business employing on the stud 6 persons with one person employed in the office, is that correct?

A. Yes.

Q. I think you have informed the Tribunal that all of the business decisions are yours.

A. Yes.

Q. Much of this is done by memory, observation, horsemanship, etc.

A. Yes.

Q. I think you say that horse charts are kept and animals breeding veterinary records etc. are tracked through the season, is that correct?

A. Yes.

Q. I think pedigrees for all animals on the farm are kept in a file and a list of all named horses of racing age who have any relevance to your farm is also kept, is that correct?

A. Yes.

Q. I think runners are checked every day to see if anything which relates to your business is running, has run

A. Yes.

Q. Winners are recorded in a master file and pedigrees are updated throughout the season, is that correct?

A. Yes.

Q. I think you have informed the Tribunal that other horses which have been bred or sold by you or related to current pedigrees are monitored by you in this way.

However, you always have a passing interest in any horse which has had any connection with you.

A. Yes.

Q. Normally, when a horse has finished its third racing season on the flat at four years of age, they go off your daily monitoring list and after that, you rely on the official pedigree to pick-up anything useful.

A. Yes.

Q. The official pedigree is what, Mrs. Mulhearn?

A. Every horse has an official pedigree recorded in a stud book by Weatherbys.

Q. I think you have informed the Tribunal that you are a limited operation and to go any further than that would be to waste your time and resources?

A. Yeah.

Q. Indeed you believe it is possible to run a stud farm of your size by simply relying on the official pedigree alone, but you believe that the monitoring system to some extent gives you an edge. That's a business edge you are talking about?

A. Yeah.

Q. I think you have informed the Tribunal that as regards bloodstock records, there is no hard and fast policy

about keeping general records, is that correct?

A. No.

Q. At the end of every year, some filing space is cleared to make space for incoming files for a new year?

A. Yeah.

Q. Files still considered possibly relevant are stored and those are not and they are not simply discarded?

A. The ones that are not considered relevant are just

Q. I think at a certain stage you simply rely upon official publications?

A. Yes.

Q. These are official publications printed by Weatherbys?

A. Well, by Weatherbys or by various like every day we would all receive daily publications with runners all over the world, and results, so you can always pick it up officially on the publications that we get, there is daily publications and weekly publications. But at the end of the day when a horse goes to the sales, its pedigree will compared officially by the sales company and they'll have picked up the winners anyway, so it's you are just doing your it to keep yourself informed, but even if you didn't do it yourself, it would officially be recorded and would appear.

Q. I think you have informed the Tribunal that you do not have a record of mares present in 1985 on Abbeville or any documents relating to any mare on Abbeville in that year or indeed any subsequent years until you left

Abbeville unless the mare came with you to Meadow Court with the exception of some index cards for 1989, is that correct?

A. Yes, I just found some index cards for 1989 which I didn't even know I had, but when I went looking, I found them.

Q. Are they at Meadow Court?

A. They are at Meadow Court, yes.

Q. I think you have informed the Tribunal that you do not require to retain that information for the successful conduct of the business and did not, therefore, retain such records or documentation?

A. No.

Q. Documents which should have identified a particular foal or mare at Abbeville are cards for a card index system for the stock lists or veterinary breeding records and these are simply not retained other than a few index cards that you phoned for '89 I think?

A. Yeah. We don't keep index cards any more because it's computerised, but that's the system we used to do. So obviously while a mare was with us, we would have her index card, but if she was sold or died or whatever, the information on it wouldn't really be necessary wouldn't be necessary to retain, so...

Q. I think you say that there is no point in retaining such documents as any information you may need may be sourced officially.

A. Yeah.

Q. That's from Weatherbys.

A. Yes.

Q. I think many, many hundreds of horses have passed through your hands since you went into the business and insofar as there is anything relevant to you, can be accessed from the official pedigree lists, is that correct?

A. Yeah. If I want to find out about any horse, it will have an official pedigree recorded in the stud book, so you would easily get it there.

Q. I think turning to the question of financial records, you have informed the Tribunal that up until the Tribunal commenced writing to you with regard to its inquiries, you believed that it was only necessary for you to keep financial records for a period of approximately three years. That was your own personal

A. Yeah, I wasn't sure, but

Q. I think accounts were prepared annually by Deloitte & Touche and a stock list provided to that annually with regard to all horses in your ownership, is that correct?

A. Yes.

Q. And I think in light of the Tribunal's correspondence, you consulted with Mr. Gerry Magee of Deloitte & Touche and was advised by him that you are, in fact, obliged

to keep official records for a period of six years.

A. Yes

Q. Or financial records. I think you were further advised by him that Deloitte & Touche had the strict retention policy for all clients for a period of six years.

A. Yes.

Q. You understand that filed copies of the final stud accounts may be retained by the Revenue Commissioners for a further period, is that correct?

A. Yeah.

Q. In any event, you did not have the administrative resources to keep records for lengthy periods, is that correct?

A. (Shakes head.)

Q. And after each audit was completed, the financial records which were all handwritten but were properly organised would be boxed and dated, is that right?

A. Yes.

Q. I think you informed the Tribunal, as is common, office storage space was a problem in that it was limited and, therefore, files and records would be disposed of after a period of approximately three years as you believed was the length of time you should

A. Yeah.

Q. I think you have informed the Tribunal that you have limited official office facilities and an office



staff of just one other person and up until recently, all financial records were handwritten entries but you are now computerised, is that correct?

A. Yes.

Q. I think you have informed the Tribunal that at no time did you contemplate depriving the Tribunal of any documents?

A. No.

Q. And that records for the period that interest the Tribunal are not available as they were discarded long before the setting up of this Tribunal as neither you nor the business had any use for them at the time they were discarded?

A. No.

Q. Now, I think with regards to the details of your involvement or dealings with Mr. Fustok, you can say that you met Mr. Fustok originally through Dr. John O'Connell at horse sales at Goffs and would have met him on occasion at other different horse sales?

A. Yes.

Q. I think specifically with regard to the Tribunal's queries as regards your involvement, knowledge or dealings in relation to a transaction whereby Mr. Fustok purchased, for the sum of  $\text{€}1/250,000$ , a yearling from your father, you can say that you have no personal knowledge of any details in relation to the transaction, is that correct?

A. No.

Q. I think you can inform the Tribunal that you had no involvement whatsoever in this transaction. You remember, in a general way, that Mr. Fustok purchased a horse from your father, is that correct?

A. Yes.

Q. You know that Mr. Fustok had discussed with your father the idea of establishing a major breeding racing enterprise in Ireland, is that correct?

A. Yes.

Q. When this did not materialise, you had the impression that he wished to purchase a horse here as a gesture of good faith, is that correct?

A. (Nods head.)

Q. You were not involved in these discussions or in any way in the sale of the horse, is that correct?

A. No.

Q. You were never aware of the purchase price, nor how the transaction was handled?

A. No.

Q. You understand that this transaction took place in 1985 or thereabouts, is that correct?

A. I understand from the Tribunal.

Q. You understand this is information you got when the query was raised, yes.

A. Yes.

Q. You can say that if, as you are told by the Tribunal,

the horse sold was a yearling, then the position is that, therefore, would not have been named at the time of the sale because thoroughbreds are usually only named at the time they are ready to go to racing and are registered in that regard.

A. Yes.

Q. Is that the general situation that they won't have a name as a yearling?

A. As a foal. You can register a name for them as a foal, but that would be unusual.

Q. It's not the practice?

A. No, because whoever buys the horse to race usually would like to give it its own name.

Q. Of course. I think you have informed the Tribunal that you have no knowledge of the time and circumstances of the manner in which the yearling was delivered, that is to Mr. Fustok, isn't that correct?

A. Yeah.

Q. I think the payment was dealt with by your father, to the best of your knowledge?

A. Yes.

Q. I think you have no information regarding the manner of payment, and you had no dealings whatsoever in the manner of the application of the proceeds of the cheque?

A. No.

Q. You have no knowledge of the lodgment of the cheque and

you had no role in its transmission?

A. No.

Q. You can say that in the normal course of events at that time, any cheque received for the sale of a horse would be lodged in the stud account with the Bank of Ireland Raheny branch and further that receipt of those monies would have been recorded in the stud's cheque receipts book at the time.

I think you have informed the Tribunal that you cannot say how the foal or yearling was journalised in the books but have caused inquiries to be made with Mr. Gerry Magee of Deloitte & Touche who has at all times been the stud's accountant, is that correct?

A. Yes.

Q. You understand that he has no recollection or record in relation to transactions as far back as 1985, is that correct?

A. No.

Q. You feel confident that the sale was journalised and dealt with in the proper manner?

A. Yes.

Q. You can confirm that proper accounts were kept and indeed, accounts were filed annually in the normal way.

A. Yes.

Q. Debit and credit ledgers, together with a cheque receipts book was kept during that period, all of which were handwritten.

A. Yes.

Q. I think you can inform the Tribunal that in relation to any other dealings with Mr. Fustok, you can recall attending horse sales in Lexington, Kentucky, USA, at which time you were introduced to Mr. Fustok's then farm manager, and was invited to call at one of his farms, is that correct?

A. Yes.

Q. I think you subsequently purchased a mare at the sales and you think that you may have availed of quarantine facilities at one of Mr. Fustok's farms in Lexington for the necessary period of four weeks.

A. Yes.

Q. Now, if I just may briefly, Mrs. Mulhearn, I think you have no records available to you going back to 1985 on the financial side, isn't that correct?

A. No.

Q. And leave aside your misunderstanding of the period for which they should have been kept, you caused inquiries to be made with the business accountants and they have no records on the financial side going back that far either. They having a retention policy of six years.

A. Yeah.

Q. And in relation to other records, that is stud records, you have no information as far back as 1985 relating to Abbeville?

A. No.

Q. And that is because, on the move to Meadow Court, you only brought, in the main, documents which were relevant to the business which was moving to Meadow Court, is that correct?

A. Yes. And even since, like, moving to Meadow Court, we moved there in 1989, I wouldn't have all the records going back to 1989. It wasn't just that there was a cutoff

Q. No, just in relation to Abbeville itself and as far back as 1985, when you moved to Meadow Court, you only brought the documents which were relevant.

A. Yeah.

Q. You remember, I think, and just to complete that, you made extensive inquiries and carried out extensive searches once the Tribunal made contact with you about this particular issue, isn't that correct?

A. Yes.

Q. Now, I think if we come to the matter which the Tribunal is specifically interested in, that is the dealings with Mr. Fustok in 1985.

A. Mm-hmm.

Q. I think you were introduced to Mr. Fustok by Mr. John O'Connell at Goff sales sometime in the early to mid-1980s?

A. I am not sure exactly when, but I would have been introduced by Dr. John O'Connell.

Q. You remember that?

A. Yeah.

Q. And do you remember in a general way your father meeting Mr. Fustok?

A. Well, I was never present when they met, but I was aware that they had met and that they sort of knew each other.

Q. That would have been, I suppose, from information you received from your father? Your father might have told you?

A. Yeah.

Q. And I think did your father tell you that Mr. Fustok and himself were having a chat about Mr. Fustok's possible involvement in the bloodstock industry in Ireland?

A. I can't exactly remember I mean, I don't remember any conversations, but I was aware in a general way that Mr. Fustok was very friendly with Dr. John O'Connell and Dr. John O'Connell was obviously trying to encourage him to come to Ireland and you know, because he had extensive bloodstock interests all over the world. And I think everybody would have thought it would be nice if somebody of his prestige and standing established a stud farm or a racing stables in Ireland. So I presume I was aware that there was some I mean, I think I was aware in a general way.

Q. In a general way?

A. Yeah.

Q. You had no involvement or any discussions relating to that?

A. No.

Q. Now, do you remember in 1985, Mr. Fustok purchasing a yearling from Abbeville or is it only something that has come to your attention from the Tribunal's inquiries?

A. Well, to tell you the truth, a lot of that is all just coming back to me from what I am hearing at the Tribunal. Like I had forgotten. I mean, I had really forgotten a lot about it because Mr. Fustok is really not in this part of the world in the horse business any so, he is not a person that you are sort of meeting on a regular basis. So sorry, could you

Q. I was just wondering, do you actually remember a transaction in 1985 or is it just something that you are now aware of because of the inquiry made of you by the Tribunal?

A. No, I was aware of it.

Q. You were aware of it?

A. Yeah, yeah.

Q. And what do you remember about it?

A. In a general I mean, I can remember my father saying something like that, oh, Mr. Fustok would like to buy one of your foals or something. It was like the wintertime, so they were just going from foals to yearlings. When you sell them as yearlings they take



on a more, you know, they are more mature and also like young race horses. But in the wintertime from foal to yearling they are quite immature. And I can remember him saying something like in a general way, Mr. Fustok would like to buy one of the horses or something and I mean, I have a vague memory of it, but I just, I just I just can't say that I specifically remember the horse.

Q. Well, could I ask you this, can you remember which yearling we are talking about?

A. No, I can't.

Q. Can you remember if anyone came to look at a horse?

A. I don't believe so.

Q. Well, who would have decided then if somebody didn't come, would it have been you or some member of the staff or your father?

A. I imagine that my father would have told him what we had on the place at the time. I don't think it was a terribly important transaction in Mr. Fustok's life, you know.

Q. Mr. Fustok was of the big players in the world, wasn't he?

A. I'll take that one. I can't imagine it was a major policy decision on his part to buy the particular horse, but I imagine he would have chosen it on pedigree, you know, whatever. I imagine he would have been told what we had and he said you know.

Q. So, it didn't, you would agree, seem to be matter much to Mr. Fustok which particular horse he received?

A. I didn't I didn't get that impression, but I mean, you know what I mean, I don't I can't imagine it was a primary purchase for him of that year, if you know what I mean? He had hundreds of horses all over the world and I think he probably paid substantially more than that for most of them.

Q. Well, I suppose, and you probably had never any discussions with Mr. Fustok how he conducted his business particularly, but he was, as you say, a major player in the world of bloodstock.

A. Yeah.

Q. And was involved in it in a serious way?

A. Yeah.

Q. A serious way of business?

A. Yeah.

Q. And unlike your small operation, which is perfectly understandable where you'd keep records on a manual basis and rely on memory and your eye and that sort of thing.

A. Mmm.

Q. I think would it have been the situation that Mr. Fustok's operation would have been on a far more professional basis?

A. I'd imagine so.

Q. And that the purchase of horses was a serious business

for him or his agents?

A. I am not sure. I don't think it was his business, but I think it was certainly a serious hobby.

Q. It was a serious hobby and a big business for most other people.

A. Yeah.

Q. And you don't have any recollection of a horse leaving, do you?

A. I mean, I can't remember that I can tell you that I can't remember it walking out of the yard but I do, I mean, I remember that, you know, he did buy a horse and that, I mean, I presume it left. No, I don't have any particular memory of when it went or how it went or

Q. You were the manager of Abbeville at the time, wouldn't that be correct?

A. Yeah.

Q. You had no direct involvement with Mr. Fustok in relation to this?

A. No, I really wouldn't have had

Q. I suppose in technical terms you were perhaps the owner of Abbeville, of the business?

A. I ran the business, yeah.

Q. Well, did you own it, do you think? Were you a sole trader?

A. Yeah. I mean, I didn't own the property, but

Q. I understand that, but the business?

A. Yeah.

Q. And from the point of view of being a sole trader, it was your horse that was being sold?

A. I presume so. We did have other we do and did have horses for other people and partnership horses, etc., so I presume it was one of ours, but I mean, if it was somebody else's it would have been different so I presume it was one of ours.

Q. Well, I think you'd accept that neither you nor your father would have been selling somebody else's horse?

A. Exactly.

Q. Now, you didn't receive you, the business, did not receive any payment from Mr. Fustok, did you?

A. No.

Q. And if you had received payment, if the business had received payment, it would have gone through the accounts at the Raheny branch of the bank?

A. Yeah.

Q. And it would have been recorded in the cheques receipts book?

A. Yes.

Q. And it would have been submitted to your accountants for the purpose of preparing the books or the accounts for the business, isn't that correct?

A. Yes.

Q. And that didn't happen?

A. Well, it would have been journalised in the books, because

Q. How do you know that?

A. Well, because the mare if the mare was our property, she'd have been in our books from the year before.

And when she visited the stallion, the nomination would have been paid, the October of that year. So once she has been to the stallion, you have paid the nomination, that pregnancy, as such comes, into your books. So you then have to account for what happened that pregnancy, the next year, where is the foal? You know. So the follow-on would have been there, so somehow the horse would have been in our books.

Q. When you say the receipt of the cheque would have been journalised to account for the disposal of the

A. Well, I don't know how it wasn't journalised because there would have been a book value on that horse in the books. The book value of a horse is what the nomination fee was. So the foal/yearling, whatever that was sold, would be in our books at a figure which was the figure that the nomination cost, for the mare to visit the sire that produced him, if you know what I mean. So there would have been an amount he would have been in our books or she would have been in our books at a figure.

Q. What type of figure might it have been? I am not holding you to anything.

A. I don't know, it depends I mean, nominations can be from  $\frac{1}{2}$ 1,000 to  $\frac{1}{2}$ 100,000. But I imagine it was

somewhere

Q. Is it the nomination fee that's carried in the books?

A. Yes.

Q. That's what it has cost to

A. Produce this animal.

Q. That has to be carried in your books?

A. Yeah, and somehow that would have to be dealt with

Q. That's what I am just interested in. On the disposal

then of a yearling, that goes back into your books and

it's recorded as that's an outgoing of the business,

is it, the nomination?

A. Yeah.

Q. And that has to be covered for and accounted for in the

books?

A. Yes.

Q. And the balance then or the difference, if you received

more, would be part of the profits of the business?

A. Yes.

Q. And when you submit the records to the accountants for

preparing the accounts, they would see that side of the

transaction carrying the nomination fee in the books,

the receipt of monies having sold of the horse as a

yearling, they'd allow for the deduction of the

nomination fee as being an expense. And then they'd

see the rest of the money going through the or

they'd see the total money going through the bank

account of the business and they'd be able to apportion

that which was profit from the costs.

A. Yes.

Q. Now, this £50,000 never went through the bank account?

A. No.

Q. And you never received it yourself?

A. No.

Q. It was a matter which was dealt with entirely by your father?

A. Yes.

Q. And we know it went to a different bank account, isn't that correct?

A. Yes.

Q. Guinness & Mahon. Doesn't it and if I understand how you kept your records, the accountants would have had to raise a query with you if they saw it being carried in the receipts book, because they would say, where is it in the bank account, wouldn't they?

A. Yeah.

Q. And an explanation would have to be given?

A. Yeah.

Q. It seems unlikely that that occurred, doesn't it, because he would have had to account to Deloitte & Touche for £50,000?

A. No, not £50,000. Because I wasn't aware of what it was sold for. I would have had to account for the

Q. You would have had to account for what was being carried in the journal, the cost of the nomination?

A. Yes, yes, I would.

Q. And that would have to be seen going through the bank account as well, wouldn't it, by the accountants?

A. Well, if it was received, yeah. You see

Q. That's just what I am trying to understand really. If you were carrying the nomination cost in your records, that would have to be accounted for on the disposal of the horse as a yearling, isn't that right?

A. Yes.

Q. And the accountants would see that and would take that into account and say, whatever the nomination was, i.e. 1/2 5,000 or i.e. 1/2 10,000 or whatever it was, and now, the horse has been sold and, therefore, we deduct that as an expense in relation to the business and they'd have to see that money going through on the other side, through the bank account when they'd look at wouldn't they?

A. Yes.

Q. And you did submit your records annually to the firm of accountants for the purpose of preparing records and

A. Absolutely.

Q. If a query like that was raised with you, what explanation could you give to the accountants?

A. I probably would have said that was sold by my father, it was handled by him and I haven't received any proceeds out of it.

Q. And that I didn't receive anything?



A. Any proceeds from it. I may have been hoping to receive some, but I didn't.

Q. That still presents a difficulty for them in preparing accounts and giving an explanation?

A. I understand that it can be journalised in different ways, like, I'd rather you talk to my accountant about this.

Q. That's something you didn't know. How do you believe it might have been journalised, because this is of interest to the Tribunal obviously?

A. When I knew I was coming here I spoke to my accountant and I was asking him had he got any recollection of this and he said, no, he hasn't, I raised the question that you have raised with me and he said, well, he said, you will have to talk to him about it, because I might not give the technical terms right, but he said was not it could be he is confident that he journalised it in the proper way and there are ways that it could have been journalised in accountancy which I wouldn't be qualified to tell you how to do it.

Q. This is a technical matter that you wouldn't have any expertise?

A. I know you are going to speak to him.

Q. Is that Mr. Magee?

A. Yeah.

Q. In real terms, it was your business, but did your father, as far as you were concerned, have the right to

deal in horses in the business in his own right?

A. Well, he did really, because as I said, I had a very fine property which I was using, you know, free of charge as such. As I said, like, a lot of the bills he paid; like the ESB, water rates and that sort of thing. So in actual fact, he was really entitled to, in my opinion, he was entitled to handle, and as I said I wasn't aware of how it was, but

Q. Whilst I know you were technically the owner of the business and ran it, to all intents and purposes you would defer to your father if he wished to do anything in the business?

A. Yes.

Q. So in your own mind, as far as you were concerned, your father was the real, and I hesitate to use this word now at the moment because of common usage of the word, your father was really the boss in the business, in your own mind?

A. Well, he was my father, so...

Q. And as far as you were concerned, if your father dealt with somebody like Mr. Fustok and received the proceeds from the sale of a horse, as far as you were concerned, he was your father and he could do with it what he wished and deal with it how he wished?

A. Yeah. I mean, I suppose, I might have said, you know

Q. You might have hoped?

A. Might have hoped to get something. But having said that, I did appreciate that I had a wonderful property and extensive bills paid for me, so that was fine as far as I was concerned.

Q. When your father was again, this may be something for the accountants, because these may be just technical accounting matters, was your father paying, as you say, the ESB and bills of that nature, did they go into the accounts as expenses of the business, do you know or

A. I don't think so, because the house and the yard, it's all sort of one, so there was no separate metres, metres for me and metres for them. That's why things got done in a general sort of way. There may have been things. I may have looked after the grounds, do you know what I mean? There was no clear lines, you know. It was really just a family farm really.

Q. And as regards the wages and salaries of the business, how were they paid?

A. I paid them.

Q. And did your father pay any of those?

A. No.

Q. Just in fairness now to yourself, could it have been that your father did discharge some of those, including perhaps, discharge some payments to yourself on occasion, do you remember? Maybe you don't.

A. Well, when I first started Abbeville, I did I worked

for him. Sorry, when I first was involved like, okay I lived with him, but do you know what I mean? At one point I worked for him. At one point I worked in his constituency office and then when I started to work in the yard, he did pay me, but then in 1979, I believe, that I then became the trader so I don't think I mean, he wouldn't have paid me after that, I don't believe.

Q. Perhaps it's something you are not fully aware of yourself. Were you the one who exercised control completely over the account at Raheny?

A. My own account, I did.

Q. No, no, I mean the business's account.

A. I'd imagine so, yeah, yeah, I mean

Q. Well, just in fairness, Mrs. Mulhearn, a lot of these may be technical accounting matters. I think you have given us a complete waiver to talk to Mr. Magee about anything we want to do and perhaps it's something we should take up on the technical side rather than ask you to deal with it completely.

Now, you never knew anything about the price that was paid for a horse by Mr. Fustok, isn't that correct?

A. Yes.

Q. You never knew anything about the money coming into

A. No.

Q. You didn't know that Dr. O'Connell was an intermediary

in that matter?

A. No.

Q. And your father never told you about any of that?

A. No.

Q. Thank you, Ms. Mulhearn.

CHAIRMAN: Nothing arises, Mr. Connolly? Mr. Allen?

Well then, Mr. Charlton? I beg your pardon,

Mr. O'Donnell, you were obscured. I didn't see you.

MR. O'DONNELL: Nothing.

CHAIRMAN: Only one point in passing, Mrs. Mulhearn,

when Dr. O'Connell gave evidence here, he referred to

his knowledge of Mrs. Fustok in the horse business as

including Mr. Fustok keeping some very large book that

had records of all the horses he had interests in.

Now, I hardly imagine he was carting this around Goff

bloodstock sales, but did you become aware of this

practice or that Mr. Fustok may have kept such a

lengthy list of all his horses?

A. No, but I'd imagine that most of the big players, big

stud farm owners, I imagine they would have to keep

very comprehensive records because they have horses all

over the world and various different trainers, so I

imagine, you know, the recording system must be quite

comprehensive. But I wouldn't have been aware it have.

CHAIRMAN: Thank you very much for your attendance

Mrs. Mulhearn.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Pat Kenny please.

CHAIRMAN: Thank you very much, Mr. Kenny. Again, I think, Mr. Kenny, it's no remote reflection, I assure you, on you, but I think you had given some assistance to the Tribunal in a private session. Perhaps for the record, if you don't mind, if you have any preference I am happy to regard you as sworn, but since this is the first public evidence given, the normal thing would be to take the oath.

A. I am totally at your disposal.

PAT KENNY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS  
BY MR. HEALY:

Q. MR. HEALY: You have provided the Tribunal with information which was initially conveyed to the Tribunal in the course of evidence given at the sittings of the Tribunal from which the public from excluded under Section 2 of the 1921 Act and as the Sole Member has said, that's no reflection on you, it was simply that it was necessary to get information from you concerning your firm's dealings with Mr. Haughey and that information you were not at liberty to convey to the Tribunal in the ordinary course of an informal meeting because you didn't have a

waiver, nor did the Tribunal have a waiver from

Mr. Haughey to enable you to do so, isn't that right?

A. That's correct, Mr. Healy.

Q. So what the Tribunal did is, you gave sworn evidence

and the evidence was given in private in case matters

came up or arose in the course of the evidence which it

wouldn't be appropriate to ventilate in public. As it

happens, very little of it that you told or very

little, if anything, of what you told the Tribunal, was

not relevant and, in fact, all of it, as far as I know,

appropriate to be ventilated in public.

And you gave that evidence on Thursday and Friday of

last week.

A. That's correct, Mr. Healy.

Q. Now, you are a partner in the firm of Deloitte &

Touche, a firm which was formerly known as Haughey

Boland, so far as your association with it goes, is

that right?

A. I am a partner in Deloitte & Touche. It's not

formerly Haughey Boland. Deloitte & Touche is a

completely separate firm.

Q. I understand that. So far as you started off, am I

right in that you started off your career as an

accountant in Haughey Boland, is that right?

A. That's correct.

Q. And that firm subsequently merged with perhaps a number

of other went through a number of incarnations and

is now known as Deloitte & Touche?

A. Correct.

Q. The larger or merged firm of Deloitte & Touche?

A. Correct.

Q. And since when have you been associated with that firm in its current or any previous incarnation?

A. As an employee, Mr. Healy?

Q. In any way? When did your association begin?

A. I believe I started with the firm of Haughey Boland in August 1975.

Q. And I think prior to that, am I right in thinking that you had some experience with the Revenue Commissioners, is that right?

A. That's correct.

Q. And your particular area of expertise, presumably because of that experience, is in the field of tax?

A. Correct.

Q. And for a number of years now, you have been a taxation partner in the firm?

A. That is correct.

Q. Now, you have informed the Tribunal that you are the person within Deloitte & Touche who is still alive and has dealt with Mr. Haughey's tax affairs, isn't that right?

A. That's correct, Mr. Healy, yes.

Q. You took over this responsibility from your



predecessor, the late Mr. Michael McMahon who died on the 11th April 1984, I think at a very young age, is that right?

A. That's correct.

Q. You continued to act in that capacity until 1997 when the firm of Deloitte & Touche ceased to act as Mr. Haughey's tax agents.

A. Correct.

Q. I think you say that you dealt with Mr. Haughey's tax affairs exclusively and no other member of staff had any dealings or involvement with Mr. Haughey's taxation affairs?

A. That's correct.

Q. Does that mean that it was only you personally who dealt with those affairs or that your section of the firm dealt with it perhaps involving you yourself and assistants who worked under you?

A. No. Right up to completing the actual physical Income Tax and Capital Gains Tax return, I did it.

Q. You personally and no one else. No assistant of yours?

A. No assistant of mine.

Q. I see. Prior to December of 1979, as we know, Mr. Haughey traded as a farmer and other personnel in Deloitte & Touche or then Haughey Boland, would have been involved in the preparation of farm accounts for that business, is that right?

A. That's correct.

Q. You think that between 1979 and 1984, you would have been involved intermittently in Mr. Haughey's affairs particularly and perhaps more so after Mr. Michael McMahon became unwell?

A. I would have said that between 1980 and Mr. McMahon's death in April 1984, I stop-gapped intermittently, was involved if anything urgent appeared, not unique to Mr. Haughey but with anybody, because I was the tax partner.

Q. Now, you have provided the Tribunal with information in relation to the arrangement made with Mr. Patrick Gallagher of the Gallagher Group whereby Mr. and Mrs. Haughey agreed to sell part of the lands at Abbeville to the Gallagher Group under the terms of an agreement entered into in January of 1980, sometime shortly after Mr. Gallagher agreed to make some  $\frac{1}{2}$ €300,000 available to Mr. Haughey, and I think what you said about that is the following:

You say you had no knowledge whatsoever of the Gallagher Group contract or of any involvement on the part of Mr. Michael McMahon in connection with that contract until the matter was brought to your attention; that you had no knowledge of the contract when you took over Mr. Haughey's affairs in 1984.

You then go on to say, and I just want to clarify this,

I am reading from a statement which was based on evidence you gave and I want to be sure that the words I use don't cause any confusion. You say the first occasion that the contract itself came to your attention would have been in or around August of 1984 when you received correspondence from the Revenue Commissioners intimating that there had been a Capital Gains Tax omission from Mr. Haughey's Income Tax return for the year 5th April 1981. You say that you recall that there were a number of reminders from the Revenue Commissioners and you took up the matter with Mr. Haughey. Initially when you asked Mr. Haughey, he stated that he did not know to what the liability could relate. Eventually, Mr. Haughey provided you with a copy of the document and your clear recollection is that a copy of the document was provided to you by Mr. Haughey rather than by the Revenue Commissioners. You say that you would have thought that Mr. Haughey furnished you with the contract in the latter part of 1985. You say that Mr. Haughey did not tell you how the document had come into existence. He did not refer you at any time to the late Mr. Traynor in connection with the document. There was no copy of the contract on Mr. McMahan's files which were passed to you after Mr. McMahan's death. There were no other documents on Mr. McMahan's files which referred to the contract or disclosed its existence. When Mr. Haughey

furnished you with the contract, he did not mention that Mr. McMahon had had or had been involved in the preparation of the document. You first became aware that Mr. McMahon may have had some role in the preparation of the document when you read the transcript of Mr. Haughey's evidence to the Tribunal.

In reviewing the contract, you would have been looking at it from the point of view of the tax implications.

You would not have dwelled too deeply on the actual construction of the document. You say that it certainly did not conform to the law associate standard contract. You note that the consideration was well in excess of  $\text{€}1$  million and there was a large deposit of  $\text{€}300,000$ . You say that you are loathe to speculate as to whether Mr. McMahon was the kind of person who would have drawn up such a document, particularly since he is now deceased. But you would speculate that certainly if Mr. McMahon was asked to advise, he would have done so. You say that in the ordinary way, where a tax expert is asked to advise, he is furnished either with Heads of Agreement or possibly a full draft of a contract so that he can consider the taxation implications. Mr. McMahon was a very careful man, you say. He was prudent, highly intelligent and a very good professional.

You go on to say that as there were a number of steps which had to be taken on foot of the contract, you

would have expected that these matters would have been diaried or flagged in Mr. McMahon's files. You say that there has been no indication of anything of that nature in his files if he had, in fact, been so involved. You say that in monitoring a contract, a prudent accountant should have had in mind that property values were falling in the early 1980s and that it would have been in Mr. Haughey's interest to select the stud farm, this is the stud farm which was to be identified by and purchased by the Gallagher Group as part of the contract, so as to reduce the deduction from the ultimate purchase price on the completion of the sale. That's an allusion to one of the terms of the contract that one of the Gallagher Group to purchase a stud farm within the certain radius of the GPO and the cost of that stud farm was then to be deducted from the ultimate price that they would have to pay for the contract.

You say that Mr. Haughey never suggested that you should deal with the late Mr. Traynor in relation to the contract.

Before going onto the rest of the statement, I think I'll just deal with your involvement to begin with.

CHAIRMAN: We might just take that short break now, Mr. Healy, and you might liaise with your colleagues

and I'll abide by whatever is the convenience of the general view. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:

Q. MR. HEALY: Now, Mr. Kenny, I want to deal with this matter that you have mentioned in your statement and which you have already referred to in evidence at sittings that were held last week, that is your knowledge of the 1980 contract and the dealings of your firm with that matter or the dealings your firm may have had with that matter.

I'll deal just, firstly, with the way in which your firm operated. In 1980 Haughey Boland was a substantial firm, isn't that right?

A. I would think probably about 130/140 people, Mr. Healy.

Q. And how many partners at that stage, roughly, can you recall?

A. I think there were probably ten.

Q. And Mr. McMahon was the person who dealt with Mr. Haughey's tax affairs?

A. That's correct.

Q. He did not deal directly with Mr. Haughey's other affairs either prior to that date or either prior to 1979, am I right, or subsequent to 1979 up to the time of his death?

A. His tax affairs. Mr. McMahon was a tax expert.

Q. But Mr. Haughey had other dealings with Haughey Boland as we have already mentioned, the firm prepared accounts for the farm business, am I right in thinking that Mr. McMahon was not involved in preparing those accounts?

A. That's correct.

Q. Would he have had a knowledge of what was going on in relation to those accounts?

A. He would review those accounts in their draft form, Mr. Healy, before they were submitted to Mr. Haughey, I assume, and then subsequently after finalisation to the Revenue Commissioners.

Q. So his involvement in the farm accounts would have been purely in examining the draft accounts after other work would have been carried out by other members of the staff. He wouldn't have been involved in the day to day counting of the horses and that sort of thing?

A. No.

Q. Now, you were asked by the Tribunal to examine the records of Haughey Boland with a view to ascertaining whether there were any references on those records to the existence of or something which might point to the existence of the contract between Mr. and Mrs. Haughey and the Gallagher Group, isn't that right?

A. That's correct.

Q. And the result of that search was that

A. I found nothing.

Q. You found nothing?

A. Yes.

Q. Mr. Haughey has informed the Tribunal that Mr. Traynor and Mr. McMahon were involved in the 1980 arrangement and he has informed the Tribunal that it was Mr. McMahon who prepared the contract. Now, you have mentioned that Mr. McMahon was a very careful, prudent and highly skilled accountant. Isn't that right?

A. That's correct.

Q. With this particular expertise in tax?

A. That's correct.

Q. In the ordinary way, one wouldn't expect an accountant, even a tax accountant who would have a little more familiarity with legal propositions than a pure auditing accountant or whatever, you wouldn't ordinarily expect such an accountant to be involved in the detailed drafting of a contract for the sale of land?

A. That's correct.

Q. In the ordinary way?

A. In the ordinary way.

Q. More especially where the consideration was extremely large as in this case, well over  $\text{\$}1$  million?

A. Well, it would certainly add gravity to your normal caution

Q. That's not to say, as you have indicated in your statement, that Mr. McMahon wouldn't have produced a



contract if he had been asked to do so?

A. As I said in my statement, Mr. Healy, I would prefer not to speculate, but I think he certainly would advise on a draft, whether he would draw a draft, I would be speculating.

Q. Well, obviously, you don't know so you are speculating. I wasn't there so I am speculating. But we know that Mr. Haughey has given evidence that his recollection of the circumstances of the arrangement are that it was Mr. McMahon prepared the document. What I am asking you to do for the moment is to assume that that was the case.

A. Okay.

Q. In other words, we have to assume that Mr. McMahon drafted a document which would normally be drafted by lawyers.

A. Correct.

Q. And Mr. McMahon would have known that if you want to bring about a transfer of land, it's not enough just to have a contract; that contract ultimately must be completed by the execution of a conveyance or some other document to transfer the title to the land, isn't that right?

A. Mr. McMahon would be very aware of that.

Q. And in this particular case, he would have known that there were a number of conditions to be attended to in relation to the ultimate completion of this contract.

A. Yes.

Q. Now, again, I suppose it would be surprising if somebody like Mr. McMahon, even assuming that he drafted the contract, it would be surprising if he didn't then say look, this is now a matter that should probably be handled by solicitors from here on in?

A. I think that's a fair observation.

Q. But assuming again that he didn't do that, would I be right in thinking that you would have expected him to attend to the steps that had to be taken to ensure that the contract was brought to its ultimate fruition?

A. Yes, that would be logical.

Q. And you would have expected to see some documentation, some diarying of the steps to be taken, some scheduling of the fact that there was an ultimate final last stop point in relation to this contract where, if it didn't go ahead, the vendor was still entitled to hold onto the deposit, isn't that right?

A. That's correct.

Q. And you found nothing whatsoever to indicate that Mr. McMahon had any involvement or took any step in relation to this document?

A. Nothing.

Q. Now, I think the first dealing that you had in your own right, if I can put it that way, with the Revenue Commissioners in connection with a Capital Gains Tax liability which arose in connection with this contract

was in 1984?

A. That's correct.

Q. Now, we'll put the letter on the overhead projector in a minute. You didn't know at the time that this letter was about that particular contract?

A. No.

Q. We know now that this is what it was leading up to, but at the time what you got was a letter marked for the personal attention of P Kenny. I think we were told that this was as a result of some prior communication between the Revenue Commissioners and your office with an inquiry to know who was dealing with Mr. Haughey's affairs, and you got a letter saying: "Dear sirs, I refer to previous communications with your firm about your client's tax affairs. I wish to know if you are dealing with his Capital Gains tax affairs for all tax years up to and including the year ended 5/4/1984. Please inform me if you are so acting."

That letter was on the 21st June 1984. There was a reminder on the 26th of July and ultimately on the 27th July, that's the reminder.

On the 27th July you replied: "Confirming that your firm acted on all matters pertinent to Mr. Haughey's Capital Gains Tax."

A. Mm-hmm.

Q. Now, before writing that letter, did you take any

specific instructions from Mr. Haughey as to whether you were at liberty to respond in the terms in which you did?

A. My best recollection, Mr. Healy, is I probably didn't.

Q. You probably assumed that as you were taking over Mr. McMahon's role, you had the authority to confirm that you had acted in all tax matters?

A. Precisely.

Q. Can I take it, therefore, that in indicating you were dealing in matters pertinent to Capital Gains Tax, you didn't have anything particular in your mind at that point?

A. Nothing at all really.

Q. Now, you then received a letter on the 9th August 1984, a letter which we have seen referred to on the overhead projector on a number of occasions, in which Mr. Clayton, on behalf of the Revenue Commissioners, wrote a letter marked for your personal attention, reference Mr. CJ Haughey, which said: "I wish to have your client's Capital Gains Tax liability brought up to date as soon as possible and would accordingly be glad if you would attend to all outstanding matters as soon as possible including the following." Number 1 is not of any particular relevance. "Number 2. Please forward your computation of chargeable gains arising on the disposal of Rath Stud in January of 1977." And the next matter. "Your client's return, which was made in

April 1981, did not show any chargeable gains accruing in the year ended 5th April 1980. And no return has been made since. Would you please review the matter and let me have information about any disposals in the periods from 6th April '79 to 5th April '84. You are, of course, aware of the provisions of Section 47 re options and deposits of the Capital Gains Tax Act 1975."

Now, when you received that letter, there was, in relation to the Capital Gains Tax, there were three items mentioned, two of which certainly were identified, one in relation to the disposal of Rath Stud, and the other in relation to gains on the disposal of shares in Abbeville Limited. I think for a moment we'll just we needn't concern ourselves too much with the Abbeville Limited disposal, because that was simply, I think, a reorganisation of assets within the family, isn't that right?

A. That's correct.

Q. The reference to Rath Stud arose from accounts which had been filed and correspondence with the Revenue Commissioners in connection with the farming operation, isn't that right?

A. Correct.

Q. And it was from those accounts and from correspondence in connection with the Revenue, in connection with

those accounts, that this matter was brought to your attention. But the other matter which is not identified is, as we now know, an invitation from the Revenue Commissioners to Mr. Haughey or you, as his accountant, to disclose a transaction of which the Revenue Commissioners were aware which had occurred in 1980 and indeed any other transaction that might have been relevant and of which they were not aware.

So now, for the first time you had a query from the Revenue Commissioners, a concrete and an intimation that the query had something to do with options or deposits. Now, at that point, did you know what that reference referred to?

A. No.

Q. You received a reminder in October of '84, another one in November of '84, another one you wrote in December of 1984 saying you regretted the delay in replying but you indicated that you would return in the very near future with the submissions requested by the Revenue Commissioners.

You received a further reminder on the 21st January 1985 seeking the promised reply. Up to that time, up to January of 1985, had you had an opportunity to discuss this letter with Mr. Haughey?

A. Again, on recollection Mr. Healy, I certainly would have gone to him in August of 1984 when I got the

letter intimating the three particular areas, but the one that would have interested me was the last one, because that was the one I didn't know about and I think that was the one when Mr. Haughey said "I don't know what would be in question." I would have gone back to him I assume, again it's recollection, once more as a result of the Revenue reminder saying there is something specific that is in the area of options and I would have said this the first time to him also, in the area of options and deposits so we must and it looks as if it's relative to the year 5th April '80. We must find it. I probably at that stage was also considering, which would be a bit unorthodox, approaching the Revenue if I wasn't going to make any progress.

Q. I.e., what are you actually talking about?

A. Help me, please.

Q. Mr. Haughey said to you that he didn't know what it was about in any case?

A. The first time certainly that's my recollection. That he did not know what it was about.

Q. At that point, at the point of your first drawing this to Mr. Haughey's attention, the response you got from Mr. Haughey was that he didn't know what the gain, or what gain there could have been to which this might have referred?

A. Correct.

Q. Now, at this particular time, this was, of course, potentially, I suppose, theoretically, a live contract?

A. It was, I suppose, theoretically is fair.

Q. Theoretically a live contract. Although in reality, we know that the Gallagher Group was hopelessly insolvent, so they were not going to be able to fulfil this contract?

A. Correct.

Q. After January of 1985, you received a further letter on the 9th April 1985 saying: "I refer to previous correspondence. It is now eight months since I wrote to you about Capital Gains Tax liabilities. The delay in dealing with the matter in question is a matter of concern and I must ask you to forward the required information and computations in the very near future."

There seems to have been no response from you to that letter and on the 28th June of 1985 you received a further letter from the Revenue Commissioners indicating at this stage a degree of concern on the part of the Revenue Commissioners and suggesting that you contact Mr. Clayton directly. "One of the points Mr. Clayton made in his letter is that other aspects of your client's Capital Gains Tax position remain unclear. See my letter 9th August 1984 which is basically unanswered and I now wish to discuss them with you. This could, I think, be best done at a



meeting in my office and I would be obliged to hear from you accordingly as early as possible."

That was in June of 1985. There was a further reminder in January of 1986.

Now, I take it that you were not blandly or cavalierly ignoring correspondence from the Revenue Commissioners?

A. No, Mr. Healy, it's neither the style of me or the firm to do that.

Q. I wouldn't have expected that. So if there were no responses to these letters, it's because you didn't have anything with which to respond, would that be right?

A. I didn't have anything with which to respond, I think, at that time.

Q. So by the time you got the letter of June of 1985 which I think went beyond the other letters in terms of the degree of concern being expressed, you must have said to Mr. Haughey, look, what are we going to do about this?

A. Again, I would assume what I would have said to him, if we can't do anything about this, I'll have to ask the Revenue, otherwise I assume they would put in an estimated assessment and attempt to collect the tax that would be the fairly normal response to that.

Q. And by this time you certainly didn't have from him or from any other source of information, the answers the

Revenue were looking for?

A. No.

Q. And if you had, you'd have given them to the Revenue Commissioners?

A. Willfully, I think.

Q. They were now potentially forming the impression that something was being withheld?

A. I think so. That would be reasonable.

Q. At that time was Mr. Haughey the only person that you approached for information in relation to whether there might or might not have been a gain?

A. The only person.

Q. Did you ever contemplate approaching for instance, Mr. Traynor?

A. No.

Q. Can I ask you why you wouldn't have said to Mr. Haughey, why don't I speak to Des Traynor about this?

A. Well, I would think, first of all, the natural style of a tax consultant is to deal with the client because the client must know what the client is doing. I also think so early in my relationship, if I ever understood it properly, I certainly didn't understand any role of Mr. Traynor with Mr. Haughey at that time.

Q. I am sorry?

A. I certainly didn't understand any role that Mr. Traynor might have with Mr. Haughey at that time. I had only

come into the case. So I would have no appreciation of Mr. Traynor's relevance. But even, I think, in any event, I'd always ask the taxpayer.

Q. I fully understand that you would, as a prudent tax adviser ask the taxpayer, but if the taxpayer didn't have the information or wasn't giving you the information, let's assume for the moment the taxpayer says he didn't have it. I am really just exploring the notion that you might have said, shouldn't I ask some other adviser of yours or who else deals with your affairs, maybe he'd know?

A. I would assume, and again it's only intelligent observation, I hope, I would say is there anywhere else I would get it? And the answer I must have got is no.

Q. Just if I could digress for a moment to canvass something about the way firms of accountants operate.

During most of this time period between 1980, well indeed, from much earlier on but certainly up to the letters. Up to the date of the letters we are now talking about, up to 1985 in any case, your firm was operating a bill-paying service for Mr. Haughey, isn't that right?

A. Yes, I understand probably did.

Q. A bill-paying service that had been put in place some years earlier?

A. That's my understanding, yes.

Q. And that involved fairly regular dealings admittedly of a presumably clerical nature with Mr. Haughey's home or with his secretaries in his office, in his home?

A. I now know with his secretary, I understand in his office in his home. I understand that's how it operated.

Q. And do I understand that bill-paying service had been set up initially by Mr. Des Traynor?

A. I honestly don't know, Mr. Healy. I don't know.

Q. Were all of Mr. Haughey's affairs in Deloitte & Touche handled in separate pigeon holes, if you like?

A. Yes. They would be. Wherever the area of expertise or whatever the job at hand so to speak was. A tax person, for instance, would deal uniquely with tax.

Q. And it would never have occurred to you to say to Mr. Haughey, look, I'll ask somebody who was dealing with your farm tax accounts or I'll ask somebody dealing with the bill-paying service, do they do know anything about that?

A. Again, being honest in recollection, I think in '84 I wasn't even possibly aware we were doing the bill paying and we hadn't done farm accounts for some five years, so and I am not even sure the people who did the farm accounts were about.

Q. Well, I think you had done the farm accounts, hadn't you, for 1979/80?

A. For a period up to the 14th December '79, but not since

then.

Q. Yes, but those accounts had been prepared long after the 14th December 1979.

A. I think by '81.

Q. By '81?

A. Yes.

Q. So somebody had been dealing with his affairs up to and during the period and throughout the period being referred to by the Revenue Commissioners?

A. Yes.

Q. And I am just wondering why and I have no particular point to make, I am simply asking you why, in a firm of accountants, it wouldn't be appropriate for you to say to the client, look, I'll ask somebody who was dealing with other aspects of your affairs and they may be able to throw some light on this?

A. It didn't occur to me, as I say, I may not have even known

Q. Mr. Haughey certainly did not direct you towards any such person?

A. No.

Q. You said you may have said to Mr. Haughey, if we don't have the information to this, then we are going to get an assessment and that is, in fact, what happened.

You did get an assessment. We have had it on the overhead projector time and again, I don't think I need to refer to it in detail.

And in response to that notice of assessment which is dated January of 1986, you wrote a letter on the 22nd May of 1986, which we might have on the overhead projector please, and that letter which we have referred to on a number of occasions describes the transaction in terms of its essentials. Isn't that right?

A. That's correct.

Q. In order to write that letter, you had to have access to information, so by this point, you must have received information?

A. I must have received very specific information, Mr. Healy, because this is very specific.

Q. Am I not right in thinking that you must have actually seen the contract?

A. Yes.

Q. Can you remember getting the contract?

A. I can't genuinely recollect getting it, but I must have received it.

Q. Can you remember being surprised when you saw the contract and being surprised that Mr. Haughey couldn't remember a transaction for  $\text{€}1.3$  million in 1980?

A. Well, yeah, again, I suppose reflectively, I probably was.

Q. And the fact that he got a deposit of  $\text{€}300,000$ , in terms of today's money, a huge sum of money?

A. Yes, large.

Q. So whatever information is contained in this letter, you ultimately got from Mr. Haughey and not from the Revenue Commissioners?

A. That is my recollection.

Q. And can you remember how can you remember what time you got that information relative to the date of the letter or, if you like, the date of the assessment which was January?

A. I thought, again best recollection, I thought it was probably latter part of 1985.

Q. And do you remember, therefore, getting it before the assessment was raised with you?

A. I would have said that they were fairly close together. I may have had it before the assessment. I really don't recollect.

Q. It's asking a lot to try to remember those sort of details. It's either, therefore, shortly after it or shortly before it, around the time of the assessment?

A. Around the time would not be unfair.

Q. And do you recall whether Mr. Haughey indicated to you or did he indicate where he found the contract?

A. No, he didn't indicate where he found it.

Q. And I think as we know from your draft statement, even if I haven't come to it yet, he never mentioned Mr. McMahon having had any role in the document?

A. None, he never mentioned it.

Q. Which in view of the fact that you were, if you like,

his successor in title, was surprising, wasn't it, that he didn't say, well, it was your deceased partner prepared this document?

A. Not an unfair observation, I would say, yes.

Q. I am now going to go on to paragraph 12 of your statement, or draft statement, Mr. Kenny, and I'll go through this fairly quickly because some of this now we have already dealt with in the course of our discussion over the last few paragraphs. I am sorry, you only have the transcript I am told. What I have is a summary of the transcript. If you think I have summarised anything incorrectly, please stop me.

A. I will.

CHAIRMAN: Are you at a material disadvantage, Mr. Allen?

MR. ALLEN: No. I am just concerned that those documents that I hadn't in my possession, but I am quite happy.

MR. HEALY: It's just a synopsis.

CHAIRMAN: A synopsis prepared by Ms. O'Brien.

MR. ALLEN: And I have no doubt excellent. I was more entirely concerned that it was something I hadn't looked at.

CHAIRMAN: There is nothing sinister.



MR. ALLEN: Thank you, Chairman.

MR. HEALY: You say that when Mr. Haughey provided with a copy of the contract, you had a discussion with regard to the Capital Gains Tax exposure. "The discussion hinged on the fact that the deposit was non-refundable as of the 31st December 1985. More importantly, from where I was considering it at the time, the Gallagher Group were irretrievably in receivership. That to me was relevant as it appeared that the conditions precedent were probably incapable of being fulfilled. So that crystallised the gain in my mind even if the 31st December 1985 had not arrived."

Obviously, at the time that you may have given that evidence, you may have been under the impression that this could have been before the 31st December 1985 that you examined the document.

A. That's correct.

Q. "The essence of the discussion with Mr. Haughey was that a liability was or was about to crystallize and that it was a very substantial liability." You go on to say that you brought all of the correspondence from the Revenue Commissioners to the attention of Mr. Haughey. You say that you may not have furnished him with copies, but you certainly would have informed

him of the contents, and I think again to repeat, you would have informed him of the fact that the letters were getting a bit sterner as they went along.

A. Yes.

Q. And getting more serious. You say you didn't take up the matter with the late Mr. Traynor and he have already dealt with that. You say that before Mr. Haughey located the document, he appeared to know how the gain arose. This would have been some months before he found the document. "He said to me he said to me that he did not know if he had made a gain but that he would go away and check the matter. It was a few months before he furnished me with the document that he said to me he did have a gain." At some point am I right they said there might have been a gain, I am not sure what this is, I'll go and make some further inquiries?

A. Again, on recollection, Mr. Healy, I think that he identified what I was talking about. He didn't have the paper material, but he assumed or remembered that there were conditions precedent and I think that's the context in which he may have

Q. You think some few months before the document was produced, i.e., some few months before the end of 1985 or the beginning of 1986, Mr. Haughey said to you, yes, I think there was a gain. Did he describe the fact that it was a deal for the sale of land?

A. I honestly don't recollect. But it would not be abnormal that he might have, because if he remembered he would have identified land I assume.

Q. But he didn't have any documents and he said he'd go and see what he could do about it?

A. He said he would search again to find the document.

Q. And there was no question on his part of searching with his solicitors or anything like that. Did you understand the search to be one he was going to carry out in Abbeville?

A. Again, on reflection backwards, my view was he was going to search.

Q. Now, I'll go on to deal now with the short matter of the Capital Gains Tax on Rath Stud. That gain arose in 1977. It wasn't, I think, ultimately dealt with by Mr. Haughey until May of 1986, isn't that right, when the liability was settled at in or about the figure which had been mentioned by Mr. McMahon some years earlier and

A. The liability was settled in '84; was paid in, I think in '86.

Q. You were the person dealing with it at that stage, not Mr. McMahon.

A. Correct.

Q. And I think you would have been aware, having regard to the year in which the gain arose, that there was this question which we have been canvassing in the course of

the evidence whether a taxpayer would be entitled to avail of the option which normally survived for only two years to rely on the 1974 valuation date for the computation of gain, isn't that right?

A. Correct.

Q. And you were aware, as an adviser in any case, a former member of the staff of the Revenue Commissioners, you were aware that the option the taxpayer had of choosing the 1974 date of valuation was a right the taxpayer had for two years after the date of the gain, but a right which he lost unless in the exercise of their discretion, the Revenue agreed to afford him that opportunity after that two-year period had expired, isn't that right?

A. Correct.

Q. So you were aware that the exercise of this discretion would be potentially a feature of the Capital Gains Tax computation by 1984/85, '86, isn't that right?

A. Correct.

Q. Now, we know from documents which have been provided by the Tribunal that the question of the exercise of this discretion was alluded to in the course of a meeting between Mr. McMahon and Mr. Donnelly in 1982 I think?

A. That's correct.

Q. But was never mentioned to you, is that right?

A. It was never mentioned to me.

Q. Did you find it surprising that there was no mention at

all of it?

A. Probably not, because there was no specific correspondence on Rath Stud other than Mr. Clayton's reference to it in the three-pointed letter.

Q. Did you think from the point of view of your client, the taxpayer, that you were getting away a little lightly in that there was no reference during the time of your involvement to this discretion?

A. I suppose, Mr. Healy, when I read the file, I would say that, again, trying to put order in an event back then, that the marker had so been put down with the Revenue in 1981, or whenever that was.

Q. But you didn't know that at the time?

A. I didn't know that at the time, because I didn't have I wasn't privy to what the Tribunal provided for me later.

Q. But from your dealings with other taxpayers at the time, were you in any way surprised that the discretion wasn't mentioned?

A. I was, because it was a new piece of legislation in its entirety, so normally it was treated line by line so to speak.

Q. From the time of your involvement in relation to Rath Stud in 1984, there was no dispute or doubt that a gain had arisen on Rath Stud, isn't that right?

A. None whatsoever.

Q. And you had no instructions from the time of your

involvement in 1984 to pay that tax?

A. No.

Q. And I assume that at no time did Mr. Haughey ever query the gain that had been made on the sale of Rath Stud?

A. No.

Q. But you received no specific instructions to pay it until such time as the assessment was raised?

A. No.

Q. Now, you did put in an appeal but it looks to me like a fairly automatic appeal put in by a firm of accountants to make sure that time doesn't run against them from the time they get a notice of assessment?

A. In the normal course of events, it would be fairly productive and I wouldn't like to demean the appeals process as being a but I did specify the total tax as the payment so I wasn't in any way trying to avoid the payment.

Q. I fully accept that. I am trying to explain the document.

A. Today you wouldn't do it because the process is totally different.

Q. Ironically, the amount of tax that you appealed was less than the amount that your colleagues had earlier said was due?

A. Because there had been a mistake in the personal exemption, yes.

Q. When you were calculating the tax due on the  $\frac{1}{2}$ 300,000

gain, you didn't introduce any or you didn't claim any deduction in respect of expenses, isn't that right?

A. That's correct.

Q. So you had no solicitors' costs to deduct, no costs incurred by Mr. Haughey in getting tax advice to deduct?

A. No.

Q. I.e., no costs arising from any involvement Mr. McMahon may have had in the arrangement?

A. No.

Q. And presumably you would have had asked Mr. Haughey, look, can't we go some few bob off this by claiming the expenses that must have been incurred in drawing up the contract?

A. It would be standard in doing a Capital Gains Tax computation to ask of costs and to deduct them.

Q. And if Mr. McMahon had, in fact, as Mr. Haughey contends, been involved in drawing up this contract, somewhat unusual contract, for a very large sum of money, would you have had expected some charges to have been raised in relation to that?

A. By Haughey Boland?

Q. Yes.

A. No.

Q. You wouldn't have?

A. No.

Q. Why is that?

A. We have a policy in the firm which we have today which we always had, in the case of retired or ex partners, we do not charge them for tax advice. It was not unique to Mr. Haughey in any way.

Q. I fully accept that. But the point that I am making is that if Mr. McMahon drew up the contract, he didn't do so in the context of tax advice. He was proceeding, if you like, a legal service at that time.

It may be a small point and you wouldn't have charged for that either, is that what you are telling me?

A. No, well, to me, without going back into the area of speculating whether he did or not. If he had advised on a draft contract or heads of agreement, he wouldn't have charged.

Q. Now, I want to come on to what happened after you received the notice of assessment and after you ultimately agreed all of the tax that was due both in respect of Rath Stud and in respect of the Gallagher deal. The total sum that the total liability amounted to is £102,330, isn't that right?

A. That's correct.

Q. Now, we know that that liability was discharged by three separate payments: One for £50,000 on the 15th July 1986, one for £25,000 on the 27th July 1987, and the balance of £27,330 on the 4th January 1988. The first two of those payments, the £50,000 payment and the £25,000 payment, in fact, went through your firm's



number 3 account, isn't that right?

A. Yeah, I understand that now, yes.

Q. That was, in fact, the same account used for the bill-paying service, isn't that right?

A. I would think that is true, yes.

Q. The third payment of \$27,330 did not go through any of your firm's any of the accounts your firm operated for their clients'

A. That's what I understand.

Q. affairs. What you say in relation to this tax is that you went to Mr. Haughey and you said to him that you needed a cheque for \$102,330 and you say that he told you that he could not afford to make the payment but that he would raise it as promptly as he could.

You say that he paid the \$50,000 relatively quickly as we know. You do not recall the method of payment or the manner by which it was made. But you assume that it would have come through your offices. And then you refer to the debits to the Haughey Boland No. 3

Account. You then refer to the documents provided to you by the Tribunal including documents indicating that you received a telephone call from Mr. Christopher Clayton regarding the outstanding tax in February of 1987 in which Mr. Clayton pressed you for the outstanding balance and you say that it again appears from a minute of a telephone conversation with Mr. Clayton that you indicated that you would advise

Mr. Haughey to pay the balance.

When Mr. Haughey said to you, look, I don't have the  
\$102,000 right away, I'll have to go away and raise it,  
did you have any role or did you discuss with him how  
he might raise that money?

A. No.

Q. Did you not feel, as accountants to Mr. Haughey, it was  
something that you would normally expect to have  
discussed with him?

A. No. At that stage, Mr. Healy, I was the tax agent  
employed on the Income Tax and Capital Gains Tax return  
and that was my role with Mr. Haughey. That was my  
sole role. But I think even in normal conditions, if  
somebody said they had to raise it or borrow it, they  
would go off and do it, unless they particularly asked  
for your assistance.

Q. But if you were dealing with a customer or a client  
today and you happen to be the tax partner in the firm  
and there is a tax liability of \$100,000 and the client  
says, well, I don't have \$100,000 and your firm also  
happens to be this particular client's overall  
accountant, would you not think, well, we'll have to  
see what we can do or we can see can we get some advice  
for you how to raise it or we will discuss it with the  
partners dealing with your accounts?

A. Well, if we were doing accounts, yes, because you'd  
have a balance sheet to look at. But again, you may

not, because if the person seemed comfortable or capable of raising it themselves, they would have their banking relationships.

Q. And at this time, am I right in thinking again that you were not aware that Mr. Traynor was involved or deeply involved in Mr. Haughey's finances and in managing his finances?

A. No, I wasn't aware of that.

Q. Did you, in fact, ever become aware of that in the course of your work as an accountant?

A. I only became aware of it really at the time of the McCracken Tribunal to be very honest I think.

Q. Up to that time Mr. Haughey never said to you that look, I'll have to talk to Mr. Traynor about this?

A. No.

Q. Can I take it that from that, it must follow from Mr. Haughey's own evidence concerning Mr. Michael McMahon's involvement in the drawing up of the contract, that Mr. Michael McMahon must have been aware of Mr. Traynor's role since they both seem to have been involved in the document?

A. Well, on the basis of Mr. Haughey's evidence, yes.

Q. I think, in fact, Mr. Traynor had been at one time Mr. Haughey's tax agent, isn't that right, in the course of his work, in Haughey Boland?

A. I am not sure about that, Mr. Healy. I know he left, I think, in 1969 if I am correct.

Q. I may have slightly more information than you have in relation to that.

A. He may have, I didn't think he was a tax expert but that's the only reason I make the observation.

Q. I didn't say he was a tax expert. He may have been the tax agent.

A. He may have.

Q. Did you know Mr. Traynor personally?

A. I was recollecting that more than once in the week past. I think I met him eight or nine times in between I becoming a partner or a partner involved with Mr. Haughey and his death I think in '93 or '94 whenever it was.

Q. Was it in connection with Mr. Haughey's affairs you met him?

A. He never discussed any aspect of Mr. Haughey's affairs with me.

Q. You presumably knew that other partners in Deloitte & Touche were involved in other aspects of Mr. Haughey's affairs?

A. Well, I am not sure that they were involved in other aspects of Mr. Haughey's affairs. They certainly would have been involved with the family company, Celtic Helicopters, but I don't think they were involved in Mr. Haughey's affairs.

Q. I am referring to Celtic Helicopters as Mr. Haughey's affairs. You may wish to obviously take a more

limited view or restricted view of it, but were you aware that Mr. Paul Carty was involved with, for instance, Celtic Helicopters?

A. I was.

Q. Were you aware that Mr. Traynor was involved in the substitution for the bill-paying service being provided by Haughey Boland, that he was aware in the substitution for that service of another service provided by Mr. Jack Stakelum?

A. I probably wasn't pronouncedly aware, I understand the change in early 1991, I wasn't pronouncedly aware then, but I do know now Mr. Traynor had thought we had become too big and I assume the possibility of non confidentiality became an issue with him.

Q. Did you know at the time

A. No.

Q. that Mr. Traynor had decided that this service should be moved to another provider?

A. I believe I didn't. It wouldn't be something that I would have been involved in.

Q. To go back to the time when Mr. Clayton contacted you and indicated to you that the collection process was going to involve ultimately routine standard procedures which could lead to enforcement action being taken against Mr. Haughey, and you indicated that you would advise Mr. Haughey, I think the note that Mr. Clayton had is that, "Only give advice," I suppose what you

were saying is I can only give advice, I will do my best. I'll endeavour to impress upon him the need to

A. As you are aware, Mr. Healy, I tried to decipher it with you before. What I think I possibly said, which I think would be on anybody's recollection, normal, I don't write the cheques. I can only advise the man, recommend strongly that he does.

Q. Do you remember having that discussion with Mr. Haughey?

A. Yes. I think putting it in context, which is also borne out by Mr. Clayton's memorandum, I think at that particular time, the possibility of what may be called proceedings against Mr. Haughey for the recovery of the balance was probably ultra sensitive, in fact, it would have been sensitive at any time for any taxpayer, but I think he was about to become Taoiseach and that meant that I had, my normal plus obligation if you like to say this is not possible. You have got to pay this tax.

Q. And do you recall what he said?

A. He said, I will try to pay it as quickly as I can.

Q. Do you recall going back to Mr. Clayton and saying, look, stop the collection process, he is saying he is going to pay it as quickly as he can?

A. Again, only because of the memorandum which I have had from the Tribunal, I think that was a Thursday that

Mr. Clayton rang me and I think I went back to him on Friday, I said to him I'd go back to him next week, I think trying to decipher again, I think it was Friday and I said I have made contact and impressed strongly that this tax should be paid forthwith. I wouldn't in any way have tried to interfere with the collection procedure. I think it would be incorrect after so long a period from the date of assessment and I couldn't give any commitment he would pay it so that wouldn't be fair.

Q. Do you remember getting a payment in July of that year?

A. No, I don't, Mr. Healy. But that wouldn't be abnormal. You get a lot of payments from a lot of your clients to pay tax.

Q. I suppose, but in this case, is there a possibility you might remember it because you would say, well look, at least I have got another  $\text{€}25,000$  and this might keep the Revenue at bay for another while?

A. No, because I understand the system I really wouldn't be relating to use the expression, keeping at bay. I appreciate the only thing that would ultimately keep them at bay is  $\text{€}102,330$ .

Q. But  $\text{€}25,000$  did keep them at bay.

A. I assume the process went on internally.

Q. But as it happens, nothing was done, no enforcement action was taken against Mr. Haughey, isn't that right?

He paid off  $\text{€}25,000$  in July of 1987 and then in January

of 1988, about six months later he paid off the balance of  $\frac{1}{2}$ 27,330.

A. I think in the context of 1986 and '87, that may not have been and I don't wish to, because I wasn't in the Revenue, that may not have been abnormal.

Q. That

A. I am not condoning it, but it may not have been abnormal.

Q. I think the Revenue Commissioners themselves have indicated that around this time the accountants were well aware that the charging of interest doesn't seem to have been a frequent or a regular part of the collection process in the Revenue Commissioners.

A. That would be no part of my thinking. I would have taken the  $\frac{1}{2}$ 102,3030 as quickly as I would have got it and paid it because it closed down the Capital Gain for me.

Q. I understand that, but you would have been aware, presumably, that you knew that interest had not been charged in this case?

A. Well, I hadn't recollected it until again we spoke about it, but now I do know fully no interest was charged.

Q. After that discussion you had with Mr. Clayton in February of 1987, do you remember having any further contact with Mr. Clayton after that?

A. I think the next time I had contact with Mr. Clayton, I



thought again before I got the Revenue files that it was probably late 1991 but I understand it was January 1992 which led to a meeting, I think, on the 7th January '92.

Q. There are two further matters to be dealt with, Sir, there is the personal Income Tax returns and there is the Residential Property Tax. I am happy to press on. I think but I am entirely

CHAIRMAN: Just take soundings perhaps from Mr. Connolly and Mr. Allen.

MR. CONNOLLY: I expect I'll be about fifteen minutes. That's the best I can estimate my questions.

CHAIRMAN: And Mr. Allen?

MR. ALLEN: In my case, Your Honour, I would have thought at most five minutes, if at all. I am quite happy to press on.

MR. HEALY: I am easy.

CHAIRMAN: Well, we'll go to, we'll go to half one and see if we have dealt with if it's dealt with, well and good, if it's necessary to, we will resume.

Q. MR. HEALY: In relation to Residential Property Tax, I am not going to go through all of the information you have already given the Tribunal, Mr. Kenny, because I

think I don't think that needs to be done. This issue has been canvassed again and again and again during the week. The bare facts are known.

It is significant that from your point of view and from the point of view of your professional standing, I should say that the Residential Property Tax returns were put in every year bar one year I think?

A. Then they were five weeks late that year.

Q. But they were put in every year?

A. Yes.

Q. They were incomplete, we know that, from having examined them?

A. Yes, on the description of the aspects of the property, yes, would be the best way of describing it.

Q. These Residential Property Tax returns were signed by Mr. Haughey, isn't that correct?

A. Every year.

Q. The tax in question was administered on a self-assessment basis, isn't that right?

A. It was truly for self-assessment tax we had.

Q. So the taxpayer had to know that what he was doing was something the Revenue Commissioners were going to rely on?

A. Yes. Except unless an exceptional attitude was taken on it, but they would rely on it, it's the essence of self-assessment.

Q. Can you remember where the figures for the valuations

came from that were put in on the form?

A. The first form which was 1983, I would have gone to Mr. Haughey and said, 'you have got to make a return in respect of Residential Property Tax for your residence.

Do you' which was not unconventional for the time -

'you can value it yourself or you can get a

professional valuation.' Mr. Haughey valued the

property.

Q. It was Mr. Haughey valued it?

A. Oh yes, because I would not value anyone's property.

Q. And I think the same valuation with a small uplift was put in most of the years from then on?

A. When I went back the next year, which again would be normal and nothing unique, I think Mr. Haughey would have probably said, 'well, it hasn't moved'. I think what I did with his agreement, I said at least I should apply the All House Price Index . That's where the uplifts actually come from.

Q. But the valuation or the core valuation at all times was Mr. Haughey's?

A. It was Mr. Haughey's because it's Mr. Haughey's returns, Mr. Haughey signs it and it's his valuation, it can never be mine.

Q. And did you ever consider advising him that he should perhaps not rely on his own assessment but take the advice of a valuer?

A. I probably didn't I would think, because conventionally

in Residential Property Tax, the vast majority of people tended to value their own property.

Q. I accept that, but here we were talking about a very substantial property, isn't that right?

A. Yes. It is a substantial property.

Q. A very important house, the amenity lands around it, presumably not something that in 1985, a busy politician would have been able to assess, is that right?

A. Well, one would assume that you can only take a person who values their own property, takes a subjective view of the value because they are not professional.

Q. The rest of the form when you got it, when you presented it to Mr. Haughey, the remainder of the form by which I mean the queries contained in the form were never filled out by him to the full extent that they should have been, isn't that right?

A. That's correct, yes.

Q. And he nevertheless proffered it to you signed for filing with the Revenue Commissioners?

A. That's correct.

Q. And did you ever think to advise him, look, you are not answering these questions, there may be some consequences?

A. Again, the consequence mostly would have been the potential to be picked out of the self-assessment

process for valuation, Mr. Healy. I may have well said that to him. Because that is the consequence, if things are not conforming on the exceptional examination, one assumes that non-conformity leads to examination.

Q. You do know that I think in 1986, there was correspondence from the Revenue Commissioners over and above the forms in which what you have just intimated did, in fact, occur, the Revenue wanted more information, isn't that right?

A. Yes.

Q. And am I right in thinking that you would have brought that letter to Mr. Haughey and said, look, the Revenue are looking for the information which should have been on the form?

A. Yes.

Q. But you never got it, is that right?

A. I never got it. But you may also be aware now I got the Revenue files on Monday, that I never realised that the property had actually subsequently been valued by the Revenue. And it was 1/2250,000 with the All Price Index uplifts. I actually, on the handover in October 1997, intimated to the succeeding agent when we ceased to act that the principal was of the view it was valued, but I was of the view it never was. So it was only last Monday I found out that the valuation was, in fact, accepted.

Q. I understand that. I am simply dealing with the issue of the actual making of the returns or the provision of the information. I simply want to establish what your role was or the role of your firm was in the non-provision of the information?

A. Purely to ask the principal for the information and recommend that we be given that information.

Q. So there is no question, you did not withhold information and you did not counsel the taxpayer to withhold information. The contrary?

A. No.

Q. So it was the taxpayer's own decision not to provide the information?

A. Yeah, that's correct.

Q. In this case, Mr. Haughey's decision.

Now, if I go on to just one final matter in relation to Residential Property Tax. An issue arose in relation to Inishvickillane. If you look at the Revenue file, you won't see, as far as I can judge, any ultimate resolution of that issue. Is that also your recollection that there was no ultimate resolution of it?

A. I have read the Revenue file and my view would be there was no ultimate resolution of that issue. I think it got lost in the valuation process I think, which I didn't know about anyway.

Q. I want to come on to the personal Income Tax returns which were being sought from Mr. Haughey for the reasons and in the circumstances that were mentioned and of which you were no doubt not aware by Mr. Clayton in evidence yesterday.

A. I am not aware although I have read the newspapers.

Q. Mr. Clayton took the view that it was unsatisfactory that a person in Mr. Haughey's prominent position should not make returns of income although he was a PAYE taxpayer. And he reached that decision because of certain concerns he had?

A. I read that this morning, Mr. Healy, yes.

Q. No doubt you must have found it somewhat unusual to be asked to put in returns on behalf of the PAYE taxpayer?

A. Well, it's not convention to submit a series of returns for a PAYE taxpayer.

Q. Have you ever done it?

A. I have done it.

Q. Since 1988, have you ever done it?

A. The only person I have done it for is Mr. Haughey.

Q. And I think the Revenue Commissioners indicated that he is the only person from the PAYE sector who was asked to do it at least in Mr. Clayton's

A. That's correct. And there was also the issue that I send in one and kind of explained ten

Q. I understand that, but I mean that was simply a question of the strategy you took in responding to the

request.

A. Yes.

Q. Now, it was an unusual request. It was an unusual step for the Revenue to take and we know why they took it now. At the time did you wonder why the Revenue were raising an issue such as this?

A. Well, I suppose, again, one speculates. When you are asked something that pronounced after so long, the first thing that runs into your head is normal human that maybe they know something, therefore they want returns to reconfirm or confirm or omit or whatever the process may be.

Q. Do you ever recall saying to Mr. Haughey, look, this is a somewhat unusual request, they may be looking for some information over and above or information concerning income over and above State emoluments?

A. I don't think so. I said, if that transpires in my paper collection for Income Tax and Capital Gains Tax, so be it and if there is an omission and the Revenue are looking for this reason, we'll hear about the omission in due course. I don't think I would have that discussion with Mr. Haughey, because it was me reflecting on Mr. Haughey not returning outside the PAYE arena.

Q. Let's be careful about this, Mr. Kenny. This was an unusual request. As an adviser, surely you must have had an obligation to Mr. Haughey to say, this is an



unusual request. Surely you had an obligation to explain to him, on the basis of your experience and your expertise, that this was an unusual request and was probably directed at getting information from Mr. Haughey over and above what information the Revenue had concerning his State emoluments?

A. I don't think so. It could well be that they wanted to bring their file up to date because of the profile of the individual.

Q. They didn't say that to you?

A. No, they didn't say that to me. What they said to me was they wanted returns.

Q. And you, like any expert or tax expert, thought they must know something here?

A. They must have wanted returns for a reason.

Q. And you knew, can I put it, natural reason why they'd want the returns because nobody could have any interest in a PAYE taxpayer's returns?

A. Well, they would be again, without demeaning them, the lowest form of return.

Q. Assume the taxpayer was a compliant taxpayer, they wouldn't yield one brass farthing for the Revenue.

They'd only waste time, in fact, isn't that right?

A. That's true.

Q. And when you brought this query to Mr. Haughey, was it you processed his response to the queries?

A. Yes.

Q. And in responding to those queries, Mr. Haughey never indicated to you that you might usefully consult with Mr. Traynor?

A. No.

Q. And you received no indication from him that there was any income other than the State emoluments?

A. No.

Q. This was in 1991 you were asked this question?

A. 1991.

Q. You presumably met Mr. Haughey in December of 1991 and went through the returns with him. It may have been January 1992?

A. It was '92 I think, Mr. Healy, by the time they were all complete I think. But I would have met Mr. Haughey, gone through the returns, he would have signed them.

Q. Did you have any dealing with Mr. Haughey's Income Tax during the period from 1984 up to December of 1991?

A. No.

Q. Do you ever remember, during all the time that you dealt with Mr. Haughey's tax, whether you ever met the Revenue Commissioners with Mr. Haughey?

A. Never.

Q. Do you know whether he ever met the Revenue Commissioners himself?

A. To my knowledge, no.

Q. You certainly were not instrumental in setting up any

such arrangement?

A. No.

Q. And you were not aware of any?

A. I certainly wasn't aware of any.

Q. In relation to Mr. Haughey's own Income Tax in what I call the Michael McMahon era, the Tribunal is aware that on the 16th April of 1981 in the letter which drew to the attention of the Revenue Commissioners the tax computation which ought to apply in relation to Rath Stud, Mr. McMahon mentioned that he was enclosing returns for '77/78, '78/79, '79/80 and '80/81. He says: "Mr. Haughey states that there were probably small fees from RTE which he signed over to charities. If technically he is still taxable in respect of any such fees, they should be included as notified."

Would the information concerning those fees have been part of Mr. McMahon's own Income Tax files, do you think?

A. I would only speculate, Mr. Healy, but I would have thought probably if they were, they weren't complete, because it would demand each time the taxpayer did something in RTE for which he got a fee, that he kept the document and handed it over to his tax accountant.

That may not follow, so he may have known something and I think that's why he may have made that statement.

Q. What I am just trying to ascertain is whether Mr. Haughey administered things like fees he might have

been due from RTE through the offices of Deloitte & Touche or Haughey Boland as it then was?

A. Again, through my retrospective knowledge, if I may use that, positively no, I would have said.

Q. Therefore, if Mr. McMahon said that to the Revenue Commissioners on the 6th April 1981 it was probably because of something Mr. Haughey said to him?

A. I would always have taken, even the first time I read it in '84, that it was because of something Mr. Haughey said to him. Mr. Haughey, he reminded Mr. McMahon that there are fees here due from RTE which presumably were very small, I think, from the time from my recollection I got some as being tax expert. They were 1/15 I think.

Q. You were not aware, I take it, at any time during your role as Mr. Haughey's tax adviser, of the fact, for instance, that he had received 1/50,000 for a horse in 1985?

A. No.

Q. And you were not aware of the any of the other dealings he had in terms of payments which had been mentioned in the course of the evidence given to this Tribunal?

A. No.

Q. Until this Tribunal began?

A. Until I was made aware of it.

Q. Just to deal with one or two final matters.

You say that on several occasions and not uniquely in 1992 or 1993, you asked Mr. Haughey how he maintained his apparent life-style on his State income?

Mr. Haughey always told you that: "It was by borrowings. That made complete sense to me as I had seen the farming accounts balance sheet as of the 14th December 1979 which showed  $\text{€}129,000$  worth of borrowings. I also speculated that the borrowings were the filler for Mr. Haughey in income terms. In relation to the matter of interest, I knew from the 1979 accounts that interest of  $\text{€}264,000$  was charged against farming income. My clear assumption and understanding was that Mr. Haughey was stacking the interest. He could not have been paying it as he had no capacity to pay it from his State income. It did not occur to me to advise Mr. Haughey that he might be creating serious difficulties for himself by continuing to run up borrowings and interest as I was his tax agent completing his Income Tax and capital tax returns. I was dealing with Mr. Haughey, who was Taoiseach, a qualified barrister and a qualified accountant and he never sought my advice. Having regard to the person I was dealing with, I took the view that he knew what he was doing."

You say that you knew once Mr. Haughey had stopped trading, there were no taxation implications on his

continued borrowing because there was no income being generated against which the interest could be charged, that is on the basis of what you had been led to believe was the situation.

A. Yes.

Q. You would have taken the view that Mr. Haughey would be well aware of what he was doing, as you have already said, and that if it was possible to structure his borrowings and to make them more efficient, he would be attendant to that himself. Could I take it, therefore, that you were brought in by Mr. Haughey on specific occasions to deal with specific tasks?

A. That's right.

Q. In the course of your time working as his agent, you presumably started off from a point where you did not know the man very well in 1984, to the point in 1991/92 where you had a much closer acquaintance with him?

A. That's fair.

Q. Presumably in 1984 he was you knew then that he was a man of huge prominence in politics and in the affairs of the country. By 1991, he was back in government. Did it ever occur to you to tell him in 1991 how you viewed the manner in which he was conducting his affairs?

A. No.

Q. And not even in relation to that unusual request that you got in 1991 from Mr. Clayton?

A. No.

Q. Would you have warned any other tax paying client of yours that there could be some danger or some exposure to them in failing to respond carefully to this request for returns?

A. I would, but I would have done that with Mr. Haughey, not in his financial affairs, but in submitting his returns.

Q. You think you would have warned him that you must be clear and accurate about this?

A. Yes.

Q. Thank you for your help, Mr. Kenny.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CONNOLLY:

Q. MR. CONNOLLY: Mr. Kenny, I want to ask you some questions on behalf of the Revenue Commissioners.

When did you first become aware of the bill-paying service being provided by your firm?

A. In the essence of how it operated and whatever was probably during the McCracken Tribunal.

Q. And at that stage, did you become aware of how long it had operated?

A. Well, without being precise, Mr. Connolly, I think it probably operated from the sixties.

Q. In any event, when you were dealing with Mr. Haughey's tax affairs during all of these years, 1980s and 1990s, you weren't aware of the bill-paying service at all, is

it?

A. I was aware that we paid bills for him. I had never seen the essence of it, ever been close to it.

Q. You were aware it existed but not aware of the amounts of money, is that what you are telling me?

A. Precisely.

Q. Am I correct in understanding that in answer you gave to Mr. Healy that your belief or the firm's belief or understanding that this effectively was being represented by loans?

A. I asked.

Q. Well, did it occur to you to put in any details in relation to loans given the personal bank loans could give rise to a set-off against tax liabilities up to the year 1985/86?

A. Mr. Connolly, from the time Mr. Haughey stopped trading on the 14th December 1979 up to the time he recommenced to trade in or around February '92, he was not entitled to a tax deduction in respect of interest. I knew that.

Q. So in any event, tax relief on bank borrowings was something you took out of the picture, you were concerned

A. Well, it was never in my picture.

Q. Did you treat Mr. Haughey any differently from other clients to whom you were providing tax advice?

A. Without being that facetious, it was probably more



reverent.

Q. That's understandable. He was, what you said to Mr. Healy, not only a Minister for Finance, but he was a former partner of your firm.

A. I never dealt with Haughey except for the latter dealings with him before we ceased to act other than him being Taoiseach or Leader of the Opposition. I think that place as person but professionally, I would not deal with him any different to any other taxpayer.

Q. In all your dealings with him, how many times do you believe you would have dealt with him? Was it once a year or twice a year or

A. It would be, Mr. Connolly, quite honestly fairly spasmodic. I would ask for a meeting when he was Taoiseach, which he was for most the time I dealt with, in fact. He mightn't be at the meeting if I wanted it. If he wanted to see me, it was a summons effectively.

Q. And the meetings were always in Kinsealy?

A. No, I met him in his office.

Q. And were these lengthy meetings or did you simply ask him to impart the required information so that you could discharge your tasks?

A. While he was in government or Leader of the Opposition, I would honestly say that the maximum meeting I had with him was fifteen minutes.

Q. But in any event, you were treating him as someone who knew enough about finance and enough about tax not to have it spelt out to him what the consequence of non-compliance would be in the way it would be appropriate for someone less experienced or qualified?

A. Again, I think that's fair, because it's only I would think, intelligent to look at the calibre of who you are dealing with.

Q. I asked that question because the impression might be given that you were having only a skimpy level of contact with him. It was enough for you to do what you had to do as far as you were concerned?

A. Absolutely. Although he was very busy, he was always very courteous and gave me time when I could get it, so to speak. I certainly worked on the basis that you knew precisely what was involved.

Q. As such, did you have questions and answers with him in relation to whatever might arise to be inserted in the tax returns?

A. Well

Q. Tax returns?

A. The tax returns were a paper collection exercise, so what I did was I collected the paper from all of the sources I knew about and then when I had a draft return, I asked to see him. I went through the draft return with him, asked him was it complete. And then he would sign it.

Q. Well, did his life-style or what appeared to be his level of spending give you any cause for disquiet as his tax adviser?

A. I, first of all, would say I knew no more about his life-style than anyone else. I asked him and was told this was borrowing. There was plenty of history OF that.

Q. There was plenty of assets to back up any level of borrowing?

A. Correct.

Q. Well, during the eighties and nineties was the life-style of a taxpayer ever an index which was seriously taken into account by the Revenue?

A. Well, I would be loathe, Mr. Connolly, to speak for the Revenue, because I think that might be a bit unfair.

But

Q. You were on the opposite sides of the Revenue on behalf of all sorts of taxpayers over the years?

A. In making an Income Tax and Capital Gains Tax return, if a person had substantial assets and capacity to borrow, life-style could be sustained beyond the level of income.

Q. In any event you were satisfied that there was nothing untoward in the way of life-style that would have warranted you taking a hard line with your client?

A. I was engaged to do PAYE and Capital Gains Tax returns. So taking a hard line was not

Q. Well, there would have possibly arisen other items, perhaps there was rent income, perhaps there was interest on bank deposits, such items would be items which would be raised in boxes on the returns, you would have had to raise some inquiries on those items before putting in nil?

A. There was never bank deposit interest and there was only rental income in the latter years.

Q. So you did raise queries on those items?

A. Oh well, by definition when I put nil in the box for deposit interest, Mr. Haughey had signed the returns confirming that.

Q. All of those insertions in the boxes are your insertions for his approval and his signature. That was the way you dealt with it?

A. Precisely.

Q. But in any event, there was nothing from what you saw in the way of Mr. Haughey's life-style, that would have given rise for disquiet on your part as to whether a valid tax return was being submitted or not?

A. A valid tax return was being submitted as far as I was concerned, because I had all the information I could get that my client and third party sources could make available to me and he signed it.

Q. When you say you had all the information that was given to you by Mr. Haughey and that's what you relied on, are you giving the impression that he wasn't

particularly forthcoming with information to you?

A. That would be very unfair. He was.

Q. You were happy he had given you all that you needed to know in order to put in tax returns on Income Tax and Residential Property Tax.

A. I wouldn't put them in if I wasn't.

Q. Was it your practice to forward to Mr. Haughey letters which you received from the Revenue with a covering letter, here is what I have got from the Revenue for your attention? Was that your practice?

A. It would depend, Mr. Connolly. I would say, most of the time I might bring them, couldn't because of sensitivity.

Q. The contents weren't simply summarised by you. They were shown to him?

A. I would have thought in practically all cases they were shown to him, or certainly the content was clearly explained.

Q. The Haughey Boland No. 3 Account, were you a signatory on that?

A. Any two partners could sign that account.

Q. And were you an equity partner at that time?

A. Yes.

Q. So from time to time you did see what was going through it?

A. No, no. I would only get a cheque, Mr. Connolly. I would never see what was going through it.

Q. Did you not see the actual accounts themselves?

A. No, there were no accounts themselves. They were invoices approved by his secretary, paid by us and given back to his secretary. That's my understanding.

Q. The bank accounts I meant.

A. No, I would never see them.

Q. And how did the payment what was the physical means by which the cheque was duly paid? I mean, we'll just take, for instance, the payments in stages in relation to the Capital Gains Tax, which you were organising. Did you contact somebody to sign up a cheque for the appropriate amount? Did you check whether funds would have been available to back up the cheque?

A. I wasn't interested in funds at all. What I assume I would have done is told Mr. Haughey he owed  $\text{€}102,330$ . He would have assumedly raised the  $\text{€}50,000$  as Mr. Healy adduce in evidence. He would have informed his secretary that  $\text{€}50,000$  was to be paid out of our No. 3 account. And as a result of that, the tax demand would have been given by his secretary to the person, whoever was doing the bill-paying and I would get  $\text{€}50,000$  to remit to the Revenue. I assume that's what actually happened.

Q. Were you concerned at all to find out whether the money was coming into the No. 3 account from Mr. Haughey or on his behalf to back up the cheque that was going to be made by your firm?

A. Well, we'd have a policy and it's not just a policy, it's an ethical requirement. We would never let a client account go into the red. Ever. So I would know without ever seeing anything, that that was our policy.

Q. Well, who would have the responsibility

A. I assume it's the financial controller of the firm.

Q. Well, in any event, we can presume that the financial controller would have brought it to your attention if the  $\frac{1}{2}$ 50,000 wasn't there to meet the cheque?

A. He'd have brought it to the managing partners' attention.

Q. I appreciate you said to Mr. Healy you didn't discuss any of this with Mr. Carty or with Mr. Traynor. Did you ever discuss it with Mr. Stakelum for that matter either?

A. Never.

Q. In your meetings with Mr. Haughey before signing up these tax returns, at any stage did Mr. Haughey place specific reliance on you to guide him as to how to deal with the items?

A. No.

Q. He told you what the information was. You used your judgement and filled in the forms on this?

A. And he signed them.

Q. When you got the request to call in to see Mr. Clayton, that type of letter would have signalled that it was a

serious matter.

A. Well, I actually got a phone call.

Q. The phone call. That would have been a signal to you among the world of tax advisers and Revenue officials that there was a serious matter?

A. Yeah, if the Chief Inspector of Taxes and the deputy Chief Inspector of Taxes wants to see you, they are obviously assuming it's a serious matter.

Q. And it would have been appropriate in those years for the Revenue to place confidence and reliance on a reputable firm of accountants to take returns at face value unless they had some hard information which would justify a further probing or scrutiny?

A. Yes, yes.

Q. Just to turn to the Gallagher document as we have referred to it. I appreciate you told Mr. Healy that there was some lack of recollection on Mr. Haughey's part as to where he had put the document. Do we understand from that that he recalled the payment but didn't know where he put the document?

A. Well, again, Mr. Connolly, I think initially he didn't recall the actual payment. Then he recalled the detail and then he found the document. That was actually, I think, the sequence of events.

Q. But when he initially didn't recall the payment, that was at one meeting and then at another meeting he recalled the payment, is that the sequence?



A. That's probably fair, yes, that's probably fair. It is fifteen years ago, to be fair.

Q. And did he give you an indication as to the nature of the document or the transaction?

A. Yeah, I would assume that when he recollected the transaction he gave me an outline.

Q. Of what was involved?

A. Yes, I assume.

Q. And you were asked by Mr. Healy about the question of costs being an appropriate deduction from the capital gain which otherwise would give rise to tax. But this was a situation where it wasn't an actual property transaction that was being taxed, it was the forfeiture of a deposit which would put it into a different type of category?

A. Well, again, Mr. Connolly, in those days, if there was a deposit associated with the disposal of land, and contract was conditional, it was not unusual for the Revenue to wait for the conditions to be fulfilled and make one assessment, so

Q. That explains why it wasn't until 1985 that was it was being dealt with after 1985 it was being dealt with.

It was being dealt with in 1986. The point I am raising is in relation to whether legal costs would have been an appropriate item to be subtracted. It might well have been it was a property transaction as such

A. Sorry, I understand your question. It's basically back to Section 47 of the Capital Gains Tax Act of 1947 and when you are looking at it after the event on forfeiture, if you had costs you'd probably apportion the costs as against the total consideration and forfeited deposit. That would probably be a fair way. And then we'd probably have had a row about that, or a discussion at least.

Q. There are no costs arising from Mr. McMahon's efforts and nothing was claimed on it?

A. Precisely.

Q. There was nothing untoward in that?

A. Well, possibly not except I didn't find any. That's the only observation I can make.

Q. Well, looking at your evidence in the round, you have described what happened, can we infer that at no stage did Mr. Haughey seek your advice in the 1980s and nineties in relation to how he would treat any payments from the Dunne family?

A. Never.

Q. We know now, as a result of the endeavours of the McCracken Tribunal and this Tribunal, that there appears to have been payments through the bill-paying service on behalf of Mr. Haughey in the order of  $\text{€}1.4$  million for the years 1985 to 1991 which would have given him a spending power well beyond what would have been expected to be available to him from his Dail

salary and his pensions. Was it your view, or more collectively, your firm's view that all of that was being subvented by loans, being raised by Mr. Haughey?

A. Well, I would have had no view because I wouldn't have known. My firm, whether they add the people actually dealing with it told us or not, I don't know, but certainly my view, if I had known, would have been he did it from borrowings because that's what he told me.

Q. I appreciate your view. This is why I am asking the question in a different way. But the firm's view was that this bill-paying service was being subvented by loans and on that basis there'd be no need for them to come to you and say you are the tax adviser in this, there is something you should know, if they were loans there was no reason for them to come to you?

A. I assume, I don't know, Mr. Connolly. It's not a discussion I have ever had.

Q. Well, it would have been an appropriate step to take if it arose that partners in the firm dealing with other aspects of Mr. Haughey's financial affairs became aware that there were substantial sums of money available to him to bring it to your attention as his tax adviser as an important matter that you should know. It wouldn't arise if we are dealing with loans and someone made that judgement, but that's what I am suggesting to you, someone in the firm must have taken a view that these

were loans and that's why they didn't come and talk to you?

A. I don't think it follows, because they'd have to be adding it up. I don't know, because it didn't happen.

Q. Thank you very much, Mr. Kenny.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. ALLEN:

Q. MR. ALLEN: Mr. Kenny, I wonder could you, if you would, just briefly outline the obligations of a tax agent in the preparation of a return of income on behalf of a PAYE earner.

A. Mr. Allen, it's the most basic form of return. It is a return of income and Capital Gains. It's a series of boxes on the return. It's a paper collection exercise to fill up boxes where boxes appropriately have an entry or to enter "none" in such boxes, collect the paper that appends to the return and submit it to the Inspector of Taxes. It is the most simple basic form of return.

Q. And in relation to that, for the period that you dealt with the tax returns of Mr. Haughey's, he was a PAYE he fell within the PAYE ambit, isn't that correct?

A. For the period from 1984 to 1992 he was purely and absolutely PAYE.

Q. And am I correct in thinking that on the return form, on the actual form for the return of income, there is

no provision for the inclusion of information relating to gifts?

A. Gift tax return is not dealt with by what I might call the conventional Inspector of Taxes. There is no provision on an Income Tax and Capital Gains Tax return for gift. There never has been, it is a totally separate form to a separate section of the Revenue and is a self-assessment tax.

Q. Just another matter on this whole issue of the obligations of the tax agent in relation to the in relation to what we might describe as facilitating the making of a return being a PAYE return. You have told the Chairman that you had filled in the boxes. You would have drawn them to the attention of Mr. Haughey and inquired of him as to whether or not the information contained is correct, is that the case?

A. That's correct.

Q. Mr. Haughey, as I understand it, told you in each case that the information was correct?

A. Yes, with the exception of one thing purely for the record. I omitted VHI a few years and he corrected me.

Q. He corrected you?

A. Yes.

Q. Would it be fair to say, Mr. Kenny, that it would have been no part of your role in relation to a PAYE return of income, or indeed the role of any other tax agent

had it not been you, to act as some form of policeman?

A. No.

Q. And there is just one final matter, if I may, Chairman, just ask Mr. Kenny.

Is there any matter, Mr. Kenny, arising from any evidence that's been given here touching on the matter of this particular module, that you wish to comment on or clarify?

A. There is one that I'd like to allude to, Mr. Chairman, if I may.

CHAIRMAN: By all means.

A. And I don't want to misrepresent it because the transcripts which formally arrive at seven, maybe it's the time of year, didn't arrive this morning, so I am going greatly by the newspapers. The newspapers indicate that Mr. Clayton believed the Income Tax returns and the Capital Gains Tax returns to be incorrect. I have no knowledge whatsoever that up to the 95/96 return that they were incorrect, and I believe that the Revenue Commissioners had no knowledge either, because if they had I assume they would have acted on it.

MR. ALLEN: Thank you, Mr. Kenny.

CHAIRMAN: Just in conclusion, Mr. Kenny, you did feel it was inappropriate for you to check with Mr. Carty or

any other colleague in the firm who may have dealt with other aspects of the taxpayer's affairs when you were in this state of limbo over the correspondence and reminders from Mr. Clayton.

A. Well, I knew this is the Capital Gains Tax, Chairman?

CHAIRMAN: Yes.

A. The Gallagher event. I knew that Mr. McMahon dealt uniquely with the tax affairs of Mr. Haughey. I didn't ask anyone else because I wasn't aware, but since then I have asked Paul Carty and he said, I wouldn't have known anything in any event.

CHAIRMAN: You mentioned, in a fairly early stage in your evidence, that because of your concern, you contemplated the slightly unorthodox course of actually talking to the Revenue. Am I right in thinking, because of times in Mr. Clayton's careful evidence, it seemed a somewhat opaque process of stripping away layers, am I right in thinking that like barristers and solicitors that fellow professionals and Mr. Clayton was an ex-colleague can occasionally have a without prejudice or off-the-record discussion that may assist bringing matters to a head on an issue such as this?

A. I think that's fair, Mr. Chairman, and I certainly would have loved if there was an off-the-record chat because it would have cut down my chase, so to speak.

CHAIRMAN: Lastly, and I don't want to be giving you any unfair position on this, but solely for my own assistance, insofar as you have had a career both in the private practicing sector and with the Revenue, there is a fair amount of testimony to the effect that it was not feasible or customary for Revenue to pursue life-style considerations. Even if that be accepted as the norm, it wouldn't, of course, be entitled precluded, would it, in practice or one hears of anecdotal folklore of prominent professionals who may have displayed rather successful Irish art collections a little too prominently and faced subsequent assessments.

A. That is absolutely true, Mr. Chairman. There was, I think, I am not sure it's a discontinued breed, but there was an outdoor group of people who, in another era back in the seventies or so, might have visited even some of these prominent people to see life-style

CHAIRMAN: But to be fair and balanced, it wasn't at the forefront of Revenue activities?

A. No, in fairness to the Revenue, the era of twenty years ago was an era where the administration and the anchor to the desk killed them effectively. I knew that because I was part of the system.

CHAIRMAN: Very good.



MR. HEALY: Just two small points.

THE WITNESS WAS FURTHER EXAMINED BY MR. HEALY:

Q. MR. HEALY: You mentioned third-party sources of information which might have been available to you to respond to queries from the Revenue. Maybe just clarify that for me, Mr. Kenny. I understood that Mr. Haughey was the main source of information.

A. Mr. Haughey's secretary was the main source.

Q. His secretary?

A. Yes. If she lost because I wasn't asking Mr. Haughey for P60s and such, the basic documents I was looking for I would have gone to the Revenue, accountant general or the Department of Finance.

Q. One other matter. Do you recall that I asked you on an earlier occasion to see whether you had any diaries from the period which might have

A. Sorry, Mr. Healy. I should have but I was following transcripts around for the week I have no 1980s diaries. I have a complete set of nineties diaries certainly.

Q. Perhaps you might examine those diaries and see what points of contact they would indicate you had with Mr. Haughey during the nineties?

A. I will of course.

Q. Thank you very much.

CHAIRMAN: Very good. Thank you very much for your assistance and attendance, Mr. Kenny. That concludes the pre-Christmas sittings. I think it's probably been no harm we persevered to conclude this evidence. I have considered whether nominating a precise date of resumption, Mr. Healy, but the fact remains that whilst there will certainly be no wasting of time after the minimal break on the part of the Tribunal, there is not inconsiderable further work to be done on Mr. Lowry's tax affairs and on other aspects as have already been alluded to in various statements and observations lately and an announcement will be made to the view to the very earliest feasible resumption in the new year.

Very good. Thank you.

THE TRIBUNAL THEN ADJOURNED.